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NOMINATING SYSTEMS:

DIRECT PRIMARIES *VERSUS* CONVENTIONS

IN THE UNITED STATES

BY

ERNST CHRISTOPHER MEYER

MADISON, WIS.
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PREFACE.

The general interest which has of late been manifested in primary reform, and the almost phenomenal spread of agitation in behalf of the nomination of candidates by a direct vote of the people, has led the author to present the results of his investigation to the public in the hope that it may contribute some share to the solution of the problem of nomination to public office, by arousing still further interest in the subject, and by opening up to the student of this question a fruitful field of experience which has remained largely unexplored heretofore.

The decline of our nominating institutions has been continuous ever since their origin. Their history of increasing corruption has been duplicated by our other political institutions, and, like them, they are gradually being forced into subjection to the law. Conceived in freedom, reared in license, matured in law, will be the complete story of their evolution. The last stage is still in its inception. It is difficult, uncertain, unsolved, and is the subject of the present study.

The primary, about which the discussion centers, is of fundamental importance. It is the citizen's citadel of right. It is the source of power in government. In purity, it is the fount from which the great blessings of democratic government flow. In corruption, it is to-day proving itself the curse of representative institutions.

For this reason it well merits close attention and serious thought.

The task of its purification is a hard one. Legislators have been toiling over it long. Many remedies have been tried, many more have been proposed, much progress has been made, but the problem has not yet been completely solved. In dealing with one of these proposed remedies—the direct primary—it is the aim of the writer to point out its advantages and disadvantages, as seen by an unimpassioned student of the facts of experience, and to suggest some possible improvements in our direct primary legislation which ultimately may lead to success.

The collection of the facts upon which this study is based proved a laborious undertaking, because of the utter lack of organized material. Printed matter frequently proved valueless because of carelessness and inaccuracy in its compilation. The widely scattered sources of experience left reliable information in many cases meager in quantity or even inaccessible. Fierce opposition to the reform, as well as over-enthusiasm in its behalf, has led to conflicting statements respecting the workings of particular systems, which at times were so inconsistent as to be almost hopelessly confusing. But withal the investigation has been interesting and encouraging.

It has been the constant aim of the author to preserve an unprejudiced and non-partisan attitude of mind, and to view the facts as they came to his knowledge in the light of one who seeks only after truth, and who endeavors to present faithfully that which he finds.

The writer is aware of the fact that inaccuracies may have crept into his work in spite of painstaking efforts

to avoid them. The uncertainties of research in a new field are many. The pioneer plow, as it jumps along, inevitably turns a crude furrow. For this reason he invites all readers to call his attention to any errors that may be discovered, with the assurance of grateful acknowledgment.

In the presentation of his subject the ambition of the author has been to furnish material for thought and study, not only to the ordinary citizen, who possesses but a general interest in primary elections, but also to enable the scientific student and the practical legislator to peruse the treatise with profit.

In Part I of this volume the evolution of the caucus and convention system is traced from its origin to the modern stage of corruption and decline, because it proves the existence of a cause for action on the part of the reformers of our nominating machinery, and justifies an elaborate exposition of direct nominations as a proposed remedy.

Part II, which deals with direct primary legislation in the United States, is intended to open up sources of study for the practical legislator who seeks primary reform. It aims to give a sufficient review of the existing direct primary laws to guide in the determination of the essential features of a good law; to indicate the imperfection of the legislation in which the principle of direct nominations has, up to the present time, in most cases, been incorporated; and to mark out the exact field of experience in which the direct vote system has been in practical operation.

Part III grows out of, and is based upon, Part II, and concerns itself with an exposition of the advantages and

disadvantages of the direct vote principle as demonstrated by a wide and varied experience. Specific facts are presented, as gathered from periodicals, magazines, newspapers, addresses, correspondence, etc., in order to ascertain whether or no the results of direct primaries have been sufficiently favorable to justify the plea for an extension of their principle, and for the adoption of some plan upon a wider scale for further experimentation.

Part IV, which discusses the relation existing between the stronger forces of reform operating in the field of politics at the present time, must not be considered as a contribution to the arguments bearing upon these subjects, but is added for the purpose of arriving at some conclusion as to what the proper order, or program, for the prosecution of the various reforms may be. It is hoped that in this way the tremendous waste of energy, resulting from the independent prosecution of really complimentary reforms, may be avoided through the concentration of the various reformatory efforts in a logical, systematic, and effective manner, for the realization of their common end—good government.

The author wishes to acknowledge his obligations to all those who have in one way or another assisted him in the preparation of this work.

ERNST C. MEYER.

MADISON, WIS.,
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TABLE OF CONTENTS.

PART I.

THE CAUCUS AND CONVENTION SYSTEM.

CHAPTER I.

THE ORIGIN AND GROWTH OF OUR NOMINATING INSTITUTIONS.

	Page.
The four stages of development	2
The primitive caucus	4
The conference and correspondence committees	6
Early delegate conventions	7
The legislative caucus	10
The congressional caucus	12
Power of the legislative and congressional caucuses	13
Fall of the congressional and legislative caucuses	15
Their baneful legacy	17
Rise of the modern caucus and convention system	18
Organization of the system	18
Operation of the system	19

CHAPTER II.

POLITICAL COMBINATIONS, THEIR NATURE AND CAUSE.

The complex conditions of modern politics	23
Increase in population and wealth	24
The unsettled population of manufacturing communities	24
The influence of the commercial spirit	25
Specialization of effort	25
The business of politics	25
The educated classes of society and politics	26
The American college and public affairs	28
Estrangement of higher education and the public service	28
A source of strength to political combinations	30
The necessity of a simpler nominating system	31

CHAPTER III.

THE CORRUPT CAUCUS OF TO-DAY.

	Page.
The definition of "caucus" and "primary"	34
Use of the terms in different localities	35
The importance of the primary	36
The order of reform	36
The incentive to corruption in the city primary	37
The advantages of the country primary	38
The Australian ballot system and regulated primaries	38
Corruption in party-regulated primaries	39
The false application of the principle of rule-regulation	40
A mistaken idea of political liberty	40
Corruption due to the Australian ballot system	41
Caucus laws and their inefficiency	41
Typical devices for the control of the primary	42
Why the voter stays at home	42
The stay-at-home spirit	43
Discouraging aspects of "machine politics"	44
Independent thought in politics	45

CHAPTER IV.

THE CONVENTION IN ITS BEST DAYS.

The convention and party success	49
The estimation of a party's strength at a convention	50
The selection of candidates	50
The arousing of party enthusiasm	51
The conciliation of party factions	51
Candidates, their nationality and residence	52
The formulation of a platform	52
The convention and party discrimination	53
A school of practical politics	53

CHAPTER V.

THE MODERN CORRUPT CONVENTION.

The causes of corruption in conventions	55
Factors which determine the extent of corruption	55
External and internal corrupting influences	56
The three classes of delegates	57
The politician and the workable candidate	57
The complexity of the convention system	58
The men who act as delegates	58
The "machine" proxy	59
The "machine" committee of credentials	59
The practice of a second choice	59
The extent of corruption	60

Page.
Internal corrupting influences..... 60
Personal considerations and public ambitions of delegates 61
The "machine" platform..... 62
The convention as a stronghold of the "machine"..... 63
The remedy lies with the people..... 64

CHAPTER VI.

PROPOSED AND APPLIED METHODS OF NOMINATION.

A classification of remedies..... 66
The "sub-ward" scheme..... 67
The proportional and minority representation schemes.... 68
The legalization of the caucus..... 69
The inadequacy of the caucus laws..... 70
The Clark system of nomination..... 71
The "open book" method of nomination..... 73
The direct primary..... 74
Direct and indirect nominations..... 74
Nominations by instructed delegates and by direct vote.. 75
Objections to uninstructed delegates..... 75
Direct nominations and instructed delegates..... 76
The capacity of the people to choose their own candidates.. 77
The influence of the ignorant element in population..... 78
Educational qualifications for suffrage..... 78
The successful fusion of wisdom and ignorance at the polls 79

PART II.

DIRECT PRIMARY LEGISLATION IN THE UNITED STATES.

CHAPTER I.

THE MOVEMENT FOR BETTER PRIMARIES.

The origin of the direct primary..... 84
Primary reform and ballot reform..... 84
Diversity of direct primary legislation..... 87
The inadequacy of the Australian ballot reform..... 87
The increasing difficulties of the primary..... 88
A false notion of political liberty..... 89
The imperfection of primary legislation..... 89
Direct primary legislation from 1880-1900..... 90
Direct primary reform in 1901..... 93
"Machine" opposition..... 95

Page.
Direct primary laws enacted in 1901..... 96
The strength of the movement for direct primaries..... 97
The National Primary Election League..... 98
The prospects of direct primary reform..... 99

CHAPTER II.

PRIMARY LEGISLATION IN THE NORTH ATLANTIC STATES.

Direct primaries in Massachusetts..... 102
The caucus law of 1894..... 103
Primary elections outside of Boston..... 104
Primaries in Boston..... 105
Experience with enrollment in Massachusetts..... 107
The New York primary election law of 1899..... 109
The general scope of the law..... 110
The power of the general party committee..... 111
Provisions for party organization..... 111
The New York enrollment system..... 112
How primary elections are to be held..... 116
New Jersey primaries..... 119
Delaware primaries..... 120
Maryland direct primaries..... 120

CHAPTER III.

AN INTRODUCTION TO THE GENERAL FEATURES AND RESULTS OF SOUTHERN DIRECT PRIMARIES.

The power of political parties over primaries..... 121
Optional primaries..... 121
Employed by the Democratic party..... 122
The extreme importance of the primary election..... 123
The purpose of the direct vote system..... 123
The rudimentary primary legislation..... 124
The freedom of the political party..... 125
The expense of the direct primaries..... 125
The position of the dominant party..... 126
Individual platforms..... 127
Personal politics in the South..... 127
Popularity of primaries in rural districts..... 129
The necessity of more thorough laws..... 130

CHAPTER IV.

SOUTHERN DIRECT PRIMARY LEGISLATION.

Primary election laws of South Carolina..... 131
The conduct of the nominating campaign..... 133
Majority nominations in South Carolina..... 135

Page.
The importance of the primary election..... 135
Direct primaries in North Carolina..... 136
Direct primary legislation in Virginia..... 136
Direct primary legislation in Georgia..... 139
Direct primary legislation in Florida..... 140
Direct primary legislation in Alabama..... 141
Direct primary legislation in Mississippi..... 141
Majority nominations in Mississippi..... 142
Direct primary legislation in Louisiana..... 143
Direct primaries in Texas..... 144

CHAPTER V.

DIRECT PRIMARIES WHICH ARE REGULATED LARGELY BY PARTY RULES.

General primary election laws of Pennsylvania..... 146
The Crawford county system..... 147
The Crawford county local law of 1872..... 148
The operation of the Crawford system..... 149
The Lancaster county local law of 1871..... 150
The Delaware county local law of 1871..... 151
The disadvantages of the Delaware county system..... 152
The local laws of Erie and Beaver counties..... 153
The Lackawanna county system..... 153
Agitation for a general direct primary law..... 154
The Ohio primary election law of 1898..... 155
The operation of the Ohio system..... 157
The attendance at the polls..... 158
Suggested improvements of the Ohio law..... 158
Tennessee primary legislation..... 160
Party primaries in eastern Tennessee..... 160
Agitation for a new law..... 161
Primary elections in West Virginia..... 162

CHAPTER VI.

DIRECT PRIMARIES WHICH ARE REGULATED LARGELY BY STATUTE.

Indiana counties employing direct primaries..... 163
Typical party rules for the conduct of direct primaries... 163
The Indiana law of 1901..... 165
The Kentucky law of 1880..... 169
The Kentucky law of 1892..... 170
The power of the party committee under the Kentucky law 171
Suggested improvements of the Kentucky law..... 171
Representatives of candidates as watchers..... 173
The assessment of candidates..... 173
Favorable results in spite of imperfect legislation..... 174
Missouri direct primary laws..... 175

CHAPTER VII.

IMPERFECT DIRECT PRIMARY LAWS AND PARTY SYSTEMS WEST OF THE MISSISSIPPI.

Page.
The direct primary in North Dakota..... 180
The direct primary in South Dakota..... 181
The direct primary in Colorado..... 182
The direct primary in Iowa..... 183
The direct primary in Kansas..... 183
The representative vote system of Jackson county, Kansas. 184
The direct primary law of Nebraska..... 187
The direct primary in Lincoln, Nebraska..... 189
The primary election law of Arkansas..... 189
The primary election law of Utah..... 190
The primary election law of Nevada..... 191

CHAPTER VIII.

THE PRIMARY ELECTION OF DELEGATES TO CONVENTIONS UNDER COMPULSORY LAWS.

Early corruption in California..... 193
The struggle which produced the law of 1866..... 194
The main features of the law of 1866..... 195
The California primary election laws of 1895, 1897 and 1899 196
The influence of the courts..... 197
The California constitutional amendment of 1899..... 198
The California law of 1901..... 200
The Illinois laws of 1885, 1887, 1889, 1898..... 205
The Illinois law of 1899..... 206
The Illinois direct primary bill of 1901..... 209
Causes of its defeat..... 210
The Washington primary election laws of 1890 and 1895.. 211

CHAPTER IX.

DIRECT PRIMARIES IN MINNESOTA.

The movement for direct primaries in Minnesota..... 213
The Minnesota primary election laws of 1895 and 1897.. 214
The Hennepin county law of 1899..... 215
The Minnesota direct primary law of 1901..... 216
Changes from the original Minnesota bill of 1901..... 222

CHAPTER X.

DIRECT PRIMARIES IN OREGON AND MICHIGAN.

The scope of the Oregon laws of 1901..... 226
The Oregon primary election law of 1891..... 226
The Oregon law of 1901 governing delegate conventions.. 227

Page.
The Oregon law of 1901 governing nominations by direct vote..... 230
Primary legislation in Michigan..... 235
The Colby direct primary bills of 1897, 1899, and 1901.... 236
The Michigan direct primary law of 1901..... 237

CHAPTER XI.

ENACTED AND PROPOSED PRIMARY LEGISLATION IN WISCONSIN.

The reform movement in Wisconsin..... 241
The caucus laws of 1891, 1893, 1895, 1897..... 241
The caucus law of 1899..... 242
The principle of a direct vote as applied in Wisconsin.. 243
The origin of the movement for direct primaries..... 244
The Lewis bill of 1897..... 245
The La Follette addresses of 1898..... 245
Comments on the La Follette addresses..... 246
The Bryant bill of 1899..... 247
The direct primary platform plank of 1900..... 248
The Stevens bill as introduced..... 249
The Stevens bill as returned from the committee rooms... 250
Opposition in the Assembly..... 251
The Senate substitutes for the Stevens bill..... 252
Objections to the Hagemeister bill..... 253
The compromise bill of the Assembly..... 254
Governor La Follette's veto of the Hagemeister bill..... 254
The effect of the veto..... 256
The Wisconsin Republican League..... 257

PART III.

AN ANALYSIS OF THE MAIN ARGUMENTS FOR AND AGAINST THE DIRECT PRIMARY.

CHAPTER I.

A GENERAL INTRODUCTION OF THE ARGUMENT.

Merit as the final test..... 260
Imperfection of direct primary legislation..... 260
Absence of fair trials of the principle..... 260
What the direct primary hopes to accomplish..... 262
How it hopes to accomplish its end..... 262
The idea of the direct primary..... 262
The determination of the field of argument..... 263

CHAPTER II.

PARTY ORGANIZATION UNDER DIRECT PRIMARIES.

Page.
The characteristics of a strong party organization..... 264
Party organization under the convention system..... 264
Party organization under the direct primary..... 265
Party disintegrating forces in the caucus or primary.... 266
Party disintegrating forces in the conventions..... 267
The necessity of a platform..... 268
Proposed solutions of the platform problem..... 268
Formulation of the platform by candidates..... 269
Formulation of the platform by a state central committee 271
Formulation of the platform by a convention..... 272
A proposed plan for the formulation of a platform..... 272
The advantages of the scheme..... 273
Party apostasy under direct primaries..... 275
Party leaders under direct primaries..... 276
Conclusion..... 276

CHAPTER III.

MINORITY NOMINATONS UNDER DIRECT PRIMARIES.

Requirements for a place upon the primary election ballot 278
The expediency of requiring a fee..... 279
The advantages and disadvantages of the nomination paper 279
The constitutionality of the fee..... 282
The actual number of candidates in the field..... 283
The attendance at the polls under direct primaries..... 285
The representative character of candidates..... 287
Minority nominations under the convention system..... 288
Minority elections..... 289
Majority nomination schemes..... 290
The Remsen first and second choice scheme..... 290
The holding of second primaries..... 291

CHAPTER IV.

THE "MACHINE" AND THE CORPORATION UNDER DIRECT PRIMARIES.

The place of the "machine"..... 293
Relation of "machines" and corporations to politics..... 293
Relation of "machines" and corporations to each other.. 294
The modern corporation in politics..... 296
Corporate control of nominations..... 296
"Machine" control under direct primaries..... 298
The relation of the lower classes to the "machine"..... 299
The difficulty of effective corruption..... 300
The open primary and "machine" control..... 300

Page.
The advantages of the "machine" under the convention system..... 300
The disadvantage of the "machine" under direct primaries 301

CHAPTER V.

THE COUNTRY AND THE CITY VOTER UNDER DIRECT PRIMARIES.

The farmer in politics..... 302
The rural candidates under the convention system..... 303
The advantages of the city voter..... 304
The relation of the city voter to the country voter..... 305
A favorable argument of experience..... 305
Who cries for justice to the farmer..... 306
The country districts under the Kansas system..... 307
The one nominating vote per district plan..... 307
The nationality and the location of candidates..... 308

CHAPTER VI.

THE PUBLIC PRESS UNDER DIRECT PRIMARIES.

The argument against the press..... 310
The press under the Cleveland direct primaries..... 310
Praises and commendations for cash..... 311
The confusion resulting from deceptive journalism..... 311
The "machine-controlled" newspaper..... 311
An argument from the Wisconsin press..... 312
The mission of the modern sound journal..... 313

CHAPTER VII.

CANDIDATES UNDER DIRECT PRIMARIES.

The natural advantage of wealth..... 315
Discriminations in fees and petitions..... 316
The rich candidate under the convention system..... 317
The poor candidate under direct primaries..... 317
Poverty and merit versus money..... 317
Experience in Cleveland, Ohio..... 318
Experience in Minnesota..... 318
The busy man and the man of leisure..... 318
The busy man under the convention system..... 319
The modest man under the direct primary..... 320
Advantage of choice by all the people..... 320
"Machine" candidates under direct primaries..... 321
Conclusion..... 322

CHAPTER VIII.

MUNICIPAL GOVERNMENT UNDER DIRECT PRIMARIES.

Page.
The bane of municipal government..... 324
The doctrine of municipal reform..... 325
Party organization in the municipality..... 325
The necessity of organization in campaigns..... 326
The "machine" and party politics..... 326
State and national politics in the city..... 327
Freedom of the city voter under direct primaries..... 328
The place of party organization in the city..... 329

CHAPTER IX.

WHO SHALL VOTE AT THE PRIMARY?

The difficulty of the question..... 330
Voting at general elections..... 331
The difference between general and primary elections.... 331
Free party action at the primary..... 332
The closed and the open primary systems..... 333
States using closed or open primaries..... 334
Provisions for voting in proposed laws..... 335
Classes of voters excluded by a test..... 336
The nomination of weak candidates..... 337
The difficulties of fraudulent nominations..... 338
The probability of fraudulent nominations..... 339
Unrecognized parties under a test..... 339
Against the requirement of a test..... 341
The perfunctory oath 342
When the legislature prescribes the test..... 343
When the party prescribes the test..... 345
The authority which ought to prescribe the test..... 347
The form of a test..... 348
Present test forms in law..... 349
Conclusion..... 350

CHAPTER X.

THE CONSTITUTIONALITY OF PRIMARY ELECTION LAWS.

Important court decisions..... 352
The Pennsylvania decision..... 353
The Colorado decision..... 353
The New York decision..... 353
Reasons for decisions of unconstitutionality..... 354
The California decision of 1896..... 354
The California decision of 1898..... 356
Classes of voters disfranchised..... 357
No decision as to the constitutionality of a test..... 358

Page.
The California decision of 1900..... 359
Discrimination against weak parties..... 360
The possible invasion of parties..... 360
The exclusion of weak parties from the regular primaries. 361
The decision of the circuit court of Oregon..... 363
The invasion of party rights..... 363
Wherein the unconstitutional features of the California law of 1899, and of the Oregon law of 1901 differed.... 365
The "opportunity" or "possibility" of wrong without relief 366
The constitutionality of the Stevens bill of Wisconsin.... 367
The superiority of the Stevens bill..... 367
The constitutionality of caucus laws..... 368
How to escape the hands of the courts..... 370
A proposed form of a test..... 370
Decision of the supreme court of Oregon, 1901..... 372
State constitutions must shelter good laws..... 373
Points raised in decisions bearing upon primary elections 373

CHAPTER XI.

THE EXPENSE OF DIRECT PRIMARIES.

The sources of expense under direct primaries..... 379
The methods of defraying the expense..... 380
Expense under compulsory or under optional primaries.. 381
Expense under public or under party primaries..... 381
Primaries a public expense..... 382
Fees and assessments..... 382
The expense of the caucus and convention system..... 383
Estimated expense of direct primaries in Wisconsin..... 384
Estimated expense of the convention system in Wisconsin 384
The small expense of direct primaries..... 385
The expense of good government..... 386

CHAPTER XII.

ARE DIRECT PRIMARIES WORTHY OF A TRIAL?

Misrepresented and prejudicial facts..... 387
A general view of the field of experience..... 387
The failings of the old Crawford system..... 388
The difficulties of direct primaries in the South..... 388
The adverse experiences in Cleveland, Ohio..... 389
Conclusion as to the importance of adverse evidence..... 390
Successful party systems..... 390
Favorable results in Kentucky..... 390
Minnesota evidence and its value..... 391
Direct nominations for state offices..... 392
Direct primaries never abandoned..... 393
The possibilities of adverse experience..... 393
The probabilities of adverse experience..... 394
Wrong interpretation of arguments..... 394

Page.
Deceptive method of opposition..... 395
The unfair use of adverse arguments..... 395
The demand for direct primaries..... 396

CHAPTER XIII.

THE ESSENTIAL FEATURES OF A GOOD DIRECT PRIMARY LAW.

No uniformity possible..... 397
The scope of the law..... 397
Fall primaries, when held..... 399
What parties shall participate..... 399
Concurrent primaries..... 400
Notices, when published..... 400
Who may be a candidate..... 400
Nomination papers..... 401
Distribution of signers..... 401
Nature of signatures..... 402
Non-partisan tickets..... 403
When nomination papers filed..... 403
Transmission of lists of candidates..... 404
Publication of lists of candidates..... 404
Furnishing of supplies..... 404
Primary election officers..... 405
Qualification and manner of voting..... 405
No pasters..... 405
Arrangement of ballot..... 406
The requirement of a test..... 406
Ballot boxes..... 407
Challengers..... 407
Hours of open polls..... 407
Canvass under open primary system..... 408
Canvass under closed primary system..... 408
The party platform..... 409
Selection of party committeemen..... 410
Organization of party committees..... 410

PART IV.

THE DIRECT PRIMARY IN ITS RELATION TO OTHER REFORMS.

CHAPTER I.

OUR CIVIL SERVICE AND ITS REFORM.

The main cause of corruption in politics..... 420
The influence of the spoils system..... 421
The paramount reform of to-day..... 422

Page.
The "machine" and civil service reform..... 423
Political and non-political offices..... 424
The demoralizing influence of patronage..... 425
Civil service legislation..... 426
Civil service rules in cities..... 427
Method of civil service reform..... 429
English experiences in reform..... 429
The effect of undue haste in reform..... 430
Imperialism and civil service reform..... 430
The principles of civil service reform legislation..... 432

CHAPTER II.

THE REDUCTION AND REDISTRIBUTION OF ELECTIVE AND APPOINTIVE OFFICES.

The spoils system and the elective principle..... 435
Elective and appointive county offices..... 435
Elective offices in the cities..... 436
The problem in the state governments..... 437
Divided executive power in the states..... 437
Scope of the governor's appointing power..... 438
The appointment of heads of departments..... 438
Popular control over the governor..... 439
The advantage of greater central control..... 440
The terms of elective offices..... 441
Cause of short terms..... 441
Tendency towards longer terms..... 442
The advantages of longer terms..... 443

CHAPTER III.

THE PREVENTION OF POLITICAL CORRUPTION.

The aim of corrupt practices legislation..... 444
A criticism of state laws in 1895..... 445
The first corrupt practices law..... 445
States having corrupt practices laws..... 445
The scope of the laws..... 446
Opposition to their enactment..... 446
What good laws would accomplish..... 447

CHAPTER IV.

THE POPULAR ELECTION OF UNITED STATES SENATORS.

The influence of direct primaries..... 448
Informal nominations at southern primaries..... 449
Why the change is urged..... 450
Senatorial elections by representative legislatures..... 450
The difficulty of amending the Constitution..... 450

CHAPTER V.

THE REFERENDUM IN AMERICA.

Page.
Relation of the direct primary to direct legislation..... 453
The referendum in the central governments..... 454
The referendum in the localities..... 454
The tendency towards its extension..... 455
Other countries using the referendum..... 455
The advantages of direct legislation..... 456
The disadvantages of direct legislation..... 457
Direct legislation and party government..... 460
Swiss and American conditions of life contrasted..... 461
The inadequacy of direct legislation as a reform in the United States..... 462
The probable future of direct legislation in the United States..... 463

CHAPTER VI.

THE PROGRAM OF REFORM.

The referendum and proportional representation..... 464
The claims for proportional representation..... 464
The sham representation of to-day..... 465
The necessity of an active legislature..... 466
The program of reform..... 466
Co-operation in reform..... 468
The people and reform..... 468
Lack of harmony between the people and the legislatures 469
The doorway to all reform..... 469
The prospects of primary reform..... 470

NOMINATING SYSTEMS.

CHAPTER I.

THE ORIGIN AND GROWTH OF OUR NOMINATING INSTITUTIONS.

Like most of our political institutions, whether constitutional or extra-constitutional, our modern caucus and convention system is an evolution. After nearly two centuries of ever-changing growth, its appearance bears few traces of its original features. The main forces which shaped its development, in spite of opposing tendencies, sprung from one strong central purpose,—the creation of nominating institutions thoroughly representative in character, and fully acceptable to a free and liberty-loving people. Not only was a representative democracy the cradle of its birth, but it was also the source of its life and power during that long period of struggle which followed, for as our nominating system was born of the people, it grew in ever-changing forms in order that it might better serve the people. Many were the threatening dangers that beset its progress; many the changes that swept in and out, in the course of this quest after more representative institutions for the choice of the servants of the people. Yet all were made to suit the form and temper of the times, and all are closely linked together in a common chain of progress.

It is difficult to classify the evolution of our caucus and convention system into eras of development. However, for the sake of convenience, and probably also for that of clearness, certain sudden and comparatively rapid changes may be taken as bounding landmarks of growth. Four such periods may be distinguished. The first begins with the first quarter of the eighteenth century and closes with the Revolution. It marks the origin and primitive growth of our local nominating institution—the caucus, which in the course of this period developed from a secret, private, unorganized gathering, to an open, irregular but public meeting.

The second period closes with the establishment of the present government in 1787. It marks the appearance of local conventions of irregularly elected delegates, as supplementary to the caucuses, and like them, without continued life from year to year. They are not called by any definite authority; they may not be called at all, and form no part of any regular political system. In addition to this, there also sprung up the conference and correspondence systems, which like the irregular conventions aimed at better representation in our nominating machinery.

The third period embraces about thirty-five years and ends in 1824. It is characterized by a rapid extension and further development of the local nominating institutions already mentioned, and also by the rise of central nominating bodies both state and national, the former being known as the legislative caucuses, and the latter as the congressional caucus. Their destruction heralds the close of the period.

The fourth period reaches into the present time. Its

passing marks the development of a complete system of caucuses and conventions, both local and central, through the overthrow of the congressional and legislative caucuses and the institution of a pure delegate convention system thoroughly representative in theory; and through the consolidation of local and central nominating bodies into one systematic whole, possessing continuity of existence and unity of action.

At present it seems as though we were upon the threshold of a fifth era of growth, marked by the abolition of the corrupted caucus and convention, and the substitution therefor of the system of direct nomination. The strong movement in this direction may yet carry the change far beyond our speculation. The same forces that have controlled the development of our nominating institutions in the main, so far, seem to be operating to produce this latest change. There is the same quest for purer representation which through one cause or another, has been repeatedly defeated in the past. Government by the people's servants is still the end sought, and since this begins with the nomination of the governing officers, it is proposed by those who advocate the change, to bring the power to choose directly home to the people.

The whole history of the evolution of our nominating institutions goes to prove that the farther they are removed from the influence of government officials, and from the control of professional politicians, and the nearer they are placed to the true source of government, the people, the more responsive are they to the will of the people, the nearer is the goal of true representation,

and the more nearly have we won the battle for good government.

Each of the periods of development will now be studied more in detail, in order to substantiate the statements just made; to see how the final product of our nominating machinery came to be; and to learn what lessons may be culled from its evolution, as an aid in the solution of the primary and convention problem, which at present is receiving the attention of many of our earnest and serious reformers in the field of politics.

The exact nature and time of the origin of the caucus, is a matter of much dispute. However, authorities agree that it rose out of the necessity for some nominating body through which candidates might be presented to the public as select persons for elective offices. Since local elective offices were created far back in our early history it will be perfectly safe to associate the birth of the caucus with that time.

The caucus began as a private and more or less secret institution.[1] According to the memoirs of Samuel Adams, as early as 1725, his father "and twenty others used to meet, make a caucus, and lay their plans for introducing certain persons into places of trust and power. By acting in concert they generally carried the elections to their own mind." In John Adams' diary of February, 1763, we also find a reference that the "caucus club" met in the garret of Tom Dawes of Boston, and chose "local officers." It was in such private, secret gatherings, without organization, and without public notice of time and place of meeting, attended only by a

[1] Amer. Hist. Rev., Vol. V, p. 258.

narrow circle of specially interested politicians, that the caucus had its origin.[1]

Such an undemocratic institution could, however, not last. Several years before the opening of the struggle in which our fathers cast England from this land, their republican ideals, and their yearning for equality of rights in politics, as in other things, forced upon the caucus a more public character. The change began in that cradle of so many of our public institutions,—New England. The time and place of meeting came to be proclaimed to all by the town crier, and thus came to pass the first public caucus in which the staunch New Englanders met in their primitive way a night or two before election and nominated their candidates.

The self-governing communities of New England, presenting as they did the purest type of democracy, found the caucus a success. How could it be otherwise, for sound as it is in theory, it here existed under ideal conditions in the midst of an honest, intelligent community, which was vitally interested in doing all things well, and was personally acquainted with all the candidates. How strikingly different the conditions under which our modern caucus must operate! Need we wonder that abuses have crept into it?

From the time of its popularization down to Washington's administration, the history of the caucus is found mainly in its extension to all the colonies, and in its rapid growth especially during the Revolution and under the Confederation, when the assumption of wider governmental powers by the colonies greatly increased the number of elective offices.

[1] Lalor's Cyclopedia of Pol. Science, Vol. I, p. 358; Amer. Hist. Rev., Vol. V, p. 254.

In the course of this period, conference and correspondence committees which were organized to perform diverse matters of State, also came to be utilized for obtaining information upon the popularity and standing of candidates for offices embracing more than a small local area. Here we have the first indication of the inadequacy of the caucus as a representative nominating body, and also the first step in the direction of delegate conventions. These committees came to be of supreme importance at the time of the Revolution, and imperfect though they were with their many varied functions, they performed valuable services as auxiliaries to the nominating caucus, and bridged the way to the nominating convention which was soon to come.[1]

The year 1789 ushered in a great change, and opened up the third period in the history of our nominating institutions. Consequent upon the Revolution there came a general readjustment of our political machinery which culminated in the establishment of the present government. As a result, there was a great increase in the number of elective offices as well as a creation, or a readjustment of the smaller political units, while the prevailing idea of the impropriety and injustice of self-nomination, and of a personal canvass [2] of votes, made some nominating and canvassing machinery absolutely necessary throughout the country.

There was, hence, a rapid extension of the caucus system, which, however, was found entirely inadequate where the constituency was large or the district exten-

[1] Amer. Hist. Rev., Vol. V, p. 255. In some cases the committees confined themselves exclusively to political matters.

[2] Amer. Hist. Rev., Vol. V, p. 256.

sive, so that a mass-meeting of all the voters would have been unwieldy, and a gathering effected only with great difficulty. This obstacle was overcome through the creation of a new institution, the "representative caucus," composed of delegates selected in primary caucuses held in case of cities in the wards, and in case of counties in the townships. The introduction of these meetings of delegates which took to themselves the name of "nominating conventions," or more briefly, "conventions," is the most important landmark in the third era of the development of our nominating machinery and gives to it a decidedly modern character.

This advance to our modern delegate system, was, however, not accomplished by a sudden jump. There were many wavering steps, and many attempts to solve the problem of representation by other means. Mass meetings in which the people of the neighborhood were numerous while the inhabitants of the more remote localities were barely represented, were the rule even as late as the close of the eighteenth century, although traces of county nominating conventions begin to appear at that time. The unrepresentative character of these mass meetings, which was increased in cases where the elective offices went beyond the confines of the county, laid them open to serious objections, and gave a new impetus to the organization of the "committees of correspondence" and "conference" to which reference has already been made.

The committees of correspondence were generally composed of a few public-spirited men who dispatched circulars to the inhabitants of the various counties to ascertain their views upon the public questions of the day,

and to learn their preferences as to candidates for the different elective offices. They differed from the analogous committees of Revolutionary and Confederation days in that their functions were generally not many and varied, but were confined to matters strictly pertaining to political nominations.[1]

The conference system which also became quite common was adopted for the nomination of candidates for the Senate of the State, or for the Federal Congress. The "conferees" or "electors" were appointed in county meetings and were required to submit their elections to the ratification of the general county meetings which, as in the case of the primitive democracies of New England, theoretically retained their full powers.[2] The conference system may hence be looked upon as fulfilling the functions of the state convention which succeeded it, while the correspondence system was more generally confined to the lesser political units and may be looked upon as being the predecessor of the county and district conventions.

The practice of electing delegates to conventions, however, won special favor wherever it was tried and during the first years of this century seems to have become fairly common for county nominations, while as early as 1788 a few isolated attempts were made to bring together delegates from the whole State for the nomination of candidates for Congress, or for the electoral college entrusted with the election of the President and Vice-President of the United States. It may be said that the delegate convention system developed from the smaller political divisions, outward to the

[1] Amer. Hist. Rev., Vol. V, p. 255. [2] Amer. Hist. Rev., Vol. V, p. 256.

larger ones, beginning with the local county conventions, and ending with those of the State and of the Nation.

But these early delegate conventions must not be looked upon as having been in all respects like those of to-day. They possessed neither permanence nor fixed organization. They were composed in an irregular way, and were but short-lived. No provision was made for their annual meeting, but they were created anew for each special occasion by the initiative of a private caucus, or by a public meeting of some kind which invited its neighbors to send delegates to a common rendezvous. Too often, also, the representation of different localities was neither complete nor direct. The decisions taken in the conventions were not binding; the leaders, at times, of their own authority made modifications in the settled list of candidates according to the requirements of the electoral situation; sometimes the local voters recast the "ticket" as they thought proper; while candidates in their turn did not consider themselves bound by the nominations made and often the competitors for the elective offices who had not been accepted went on with their candidatures just the same and offered themselves to the electorate. The distinction of parties even, was not always observed and mixed lists were made up.

It is not these primitive conventions of delegates which were themselves without organization, and which died with the day that created them, that were to furnish the fixed form to the parties in their extra-constitutional existence in which nomination to office was to become the most important function. This machinery

grew up under the shadow of our constitutional structure, namely in the state legislatures, and in the Congress of the United States.[1] The previous caucus and convention system needed the infusion of the ideas of system, of continuity of existence, of regularity, of binding action, and of party distinction, to mould it into our modern system. These ideas are the contribution of the legislative and congressional caucuses which for a period of about a quarter of a century occupied the most important position in our nominating machinery.

Both the state and national caucuses were not called into being arbitrarily, but like the rudimentary nominating machinery already sketched, they were a growth finding their origin in the necessities of the time, and dying out when their services were no longer required, or they failed to perform them properly.

The need for central nominating bodies in the States rose with the creation of their central governments. It has already been seen how the need for a nominating system in the localities brought forth a loosely constructed and periodical machinery. For the elective offices bestowed in each State by the whole body of its voters, such as governor, lieutenant-governor, or presidential elector, the necessity of a preliminary understanding as to the candidates was still greater than for the smaller territorial units and it could only be suitably effected in a single meeting for the whole State. The conference system, and to some extent the correspondence system, but imperfectly met this need which fast grew more pressing.

[1] Amer. Hist. Rev., Vol. V, p. 256.

To organize general meetings of representatives of all the localities of the State in a regular way, was by no means easy in ordinary times, both on account of the means of communication in those days, which made a journey to the capital of the State a formidable and almost hazardous undertaking, and because of the difficulty of finding men of leisure willing to leave their homes for the discharge of a temporary, expensive duty. However, men enjoying the confidence of the voters of the State were already assembled in the capital in pursuance of their functions as members of the legislature. These men were in good position to bring before their constituents the names of candidates who could command the most votes in the State. This thought came not only to the public but in particular to the members of the state legislatures themselves, and they laid hands on the nomination of the candidates to the state offices while the public looked on in contentment.

The evolution of the legislative caucus marks the beginning of the third period of development of our nominating machinery. The members of both houses belonging to the same party met semi-officially, generally in the legislative building itself, made their selections and communicated them to the voters by means of a proclamation, which they signed individually. Sometimes other signatures of well-known citizens who happened to be in the capital at that moment were added, to give more weight to the recommendations of the legislators. To make it more sure of prevailing, the latter soon adopted the system of correspondence committees, which devoted their energies throughout the State to the success of the list. Thus the correspondence committee

system was made an auxiliary of the central or state caucus, as it had already been made an auxiliary of the local caucus.

This practice of recommending candidates began as early as 1790 when Rhode Island brought its governor and lieutenant-governor before the people by this method; and by 1796 the practice appears to have become quite settled in all the States. Thus there was introduced for the first time a permanent party organization nestling under the wing of the legislatures and composed of their very elements. It rose above the more or less fortuitous town and county meetings in which choice is made either directly, or in the second instance, of candidates for local elective offices. Since the legislature was largely composed of the "old ruling class" the legislative caucuses were also tainted with "aristocratism." Faith in these natural leaders of society was not yet lagging and so their nominees were generally received with favor.

In the meantime there had arisen in the Federal Congress a caucus which, like the legislative caucuses of the States took in hand the nomination of officers,—in this case, the President and Vice-President, and thereby entered upon a course in which the power conferred upon the electors was destined to disappear. It is necessary to devote a few more words to each of these historic institutions because they exerted a profound influence upon our modern caucus and convention system which grew up on their ruins.

The congressional caucus developed out of semi-official meetings held by the Federalist members of Congress for the purpose of settling lines of conduct be-

forehand on the most important questions coming before Congress. These decisions soon acquired a peculiar moral sanction which gave them almost legal authority. It was Hamilton who, in attempting to place Pinckney in 1801, conceived the novel electoral maneuvre of having the Federal party by a formal decision of its members sanction the candidacy of his favorite. He succeeded, and thus the congressional caucus came into being in 1801, only to pass through a brief and stormy life up to its destruction in 1824.

From the beginning there were protests against the procedure of this caucus, as well as against the institution itself, as depriving the people of a sacred right. But it, nevertheless, gained ground so that by 1816, its decisions had acquired such weight with every member, that it was considered binding in honor on him, as well as on every adherent of the party in the country who did not care to incur the reproach of political heresy or apostasy. Under cover of these notions there arose in the American electorate the convention, and with it came the fatal dogma of regular candidatures, adopted in the party councils, which alone were considered to possess the right to court the popular suffrage. Whatever good this dogma may have wrought, its evils lie bare on all sides as will be seen later.

The congressional caucus, representing as it did the supreme interests of the party in power, was able to concentrate all its forces in the great fights for the presidency, both by resort to intimidation and the suppression of factions, and through the electoral method adopted by most of the States to insure their political

integrity, under which presidential electors were elected upon a general ticket.

But the advantage offered by the general ticket,—the maintenance of the sovereign individuality of the State and of the supremacy of the party, could only be secured on condition that a *single* list of candidates for electors, was regularly put into shape somewhere on behalf of the people who were to vote for it; otherwise the desired concentration could never be carried out over the whole State. This being so, the congressional caucus, and its local agencies led by members of both houses in the States, had only to come forward and prepare the lists which the people would accept and dutifully vote upon. The general ticket called for the caucus, the caucus smoothed the way for the general ticket, and each made over to the other that sacred right of the people—the full and independent exercise of the electoral franchise. While the general ticket claimed to prevent the "consolidation" of the States, the legislative caucus consolidated in each State, power in the hands of a few. The former was said to justify the latter. Moreover a dissentient presidential elector having no chance of being returned under the general ticket, the "imperative mandate" became logically and almost spontaneously the rule for the electors, to the advantage of the candidates adopted by the congressional caucus. Thus in the first and in the second instance, voters and electors both abdicated their independence.[1] The voters had been reduced to mere machines and cast their ballots for electors who had already been chosen in legislative caucuses, while these electors in turn were

[1] Amer. Hist. Rev., Vol. V, p. 266.

mere machines and cast their votes for a President and Vice-President who had already been selected by a congressional caucus.

It is but natural that the malpractices of leaders of caucuses resulting from such conditions, should soon cause a revolt in the public conscience. Protests increased from year to year. The tide of democracy which had swept in with Jefferson continued to rise. The era of good feeling dawned and passed. Popular clamor grew louder. Statesmen and politicians felt that soon the system must give way to the people. Public meetings almost without exception condemned the nominations made by the caucus as a flagrant usurpation of the rights of the people. State legislatures began to oppose it. Tammany alone stood firm. The end finally came in a three-day debate in Congress, when the Senate, wearied out, adjourned the discussion *sine die*. The congressional caucus was doomed. The people had won a decisive battle. King Caucus was dethroned.

But the tide of democracy was not to be staid. It swept on into the States. The legislative caucuses which had already been broken into in some cases before the burst of democratic feeling during the third decade of the nineteenth century because of their non-representative character, since all districts of a State in which the party was in a minority were left unrepresented, were now to receive a final blow which was to leave them in utter collapse.

As a result of this movement there appeared in 1817 a new variation of our nominating machinery known as a "mixed convention," which was a popular convention of delegates from the counties in which the members of

the legislature were to sit only in the absence of special envoys or delegates from their county.[1] This plan of convention gave a definite and permanent form in party government to the principle and the practice of an authority delegated by the people to a popular convention, the haphazard antecedents of which we have seen rise at the dawn of the American Republic, in the conference and correspondence committees, and in the sporadic conventions of state delegates.

In spite of the strong popular movement the legislative caucuses disappeared but slowly. In Massachusetts special delegates were not added to the legislative caucus until 1823, while in New York as late as 1824 the legislative caucus remained practically uninfluenced by popularly chosen delegates. This indicates in a very concrete way how great an influence the caucuses possessed over the minds of the people, how strong the force of habit of having men nominated for them, how irresistible the prestige of leadership.

For these same reasons it was that in spite of the great popular upheaval, the congressional caucus was able to hold its own for no less than a quarter of a century and wielded its oligarchical power, with the aid of a few small groups of men scattered throughout the Union. But if democratic feeling did not at once become an irresistible force, if it did not advance by leaps and bounds, it none the less accumulated slowly in the mind of the Nation by a daily and hourly process, while within the States, the legislative caucus giving birth to the mixed convention, was itself paving the way for a new era when the people should once more nominate.

[1] Amer. Hist. Rev., Vol. V, p. 278.

Though the congressional and legislative caucuses were wiped out, their poison was to remain to vitiate American politics from then on. Their great prestige, as being composed of members of the highest legislative bodies of the land, had given their decisions a high moral sanction, and had won for their nominees great respect. The notion of party regularity had grown upon the people, and with it the mental habit of peaceably abiding by the wishes of the caucuses. There was implanted in them a deep respect for party conventionalism, for its external badge, and they were drilled into a blind acceptance of "regular nominations."

This legacy—"the charm of regular nominations" which mysteriously holds voters to the machine that manufactures candidates and leads them to cast their ballots as its slave, without question as to who is represented, or how it is done, was bequeathed to us by the non-representative caucus. This idea which is so firmly implanted in the American mind, is proving one of the greatest difficulties in the way of modern primary reform. Now, as then, the struggle is against an absolute, non-representative body—the "machine-controlled" caucus and convention, and the same "charm of regular nominations" stands in the way, holding the voter with irresistible power, and blinding him into a full acceptance of corrupt leadership.

The downfall of the congressional and legislative caucuses marks the period of transition to our modern convention system. The mixed state convention already spoken of plainly contained the germs of this system which is composed purely of popularly elected delegates. All that was necessary was that the local caucuses for

districts which had members in the legislature should claim the same privilege of choosing their own representatives to the state legislative caucus, as that which had already been conceded to districts without representation in the legislative caucus. This was soon achieved. As early as 1823 the first state convention, composed entirely of popular delegates elected by the people, was held in Philadelphia; and by 1832 legislative caucuses as nominating bodies had practically ceased to be.

The change was complete and significant. A thoroughly representative nominating machinery had evolved. In the localities caucuses and conventions of a popular stamp had already sprung up. Hence, the creation of a popularly elected state convention marked the perfection within each State of a purely representative nominating system which served to give unity to the various local conventions and was far enough removed from the individual to give its decisions great authority, and to give the seal of "regularity" to the local bodies whose representatives it should admit, thereby transforming the independent local nominating institutions into the lesser organs of a securely bound system.

The organization and the working of this system is as interesting as it is intricate. At the basis lies the primary as the unit of organization. It has three duties: to select local candidates, local committee-men, and delegates to conventions. It is composed of all the party voters who attend upon its meetings, resident within the bounds of the town, ward, or county, whichever may be the local political unit. The delegates selected meet in a nominating convention, choose candidates or select del

egates to still higher conventions, as in the case of our national convention in which no primary is directly represented.

"A primary, of course, sends delegates to a number of different conventions, because its area, let us say the township or ward, is included in a number of different election districts, each of which has its own convention. Thus the same primary will in a city choose delegates to at least the following conventions, and probably to one or two others: (a) To the city convention, which nominates the mayor and other city officers; (b) to the assembly district convention, which nominates candidates for the lower house of the state legislature; (c) to the senatorial district convention, which nominates candidates for the state senate; (d) to the congressional district convention, which nominates candidates for congress; (e) to the state convention, which nominates candidates for the governorship and other state offices." [1] In addition to this there may also be a county convention for county offices, and a judicial district convention for judgeships. This general plan of organization is adhered to in the different States, although there is no complete uniformity.

We may now trace the operation of this complex nominating machinery. Business begins in the primary which is summoned by the local party managing committee or some other prescribed authority, either under the rules and by-laws of the party, or under statutory law, where caucus or primary laws have been enacted. Where local officers are to be nominated, names are submitted and either accepted unanimously or upon major-

[1] Bryce, American Commonwealth, Vol. II, p. 85.

ity vote. If delegates are to be selected the local committee usually has a list of names prepared beforehand, although any voter present may bring forward other names. The list of delegates chosen is signed by the chairman of the primary, who then adjourns the meeting *sine die,* unless party committeemen are also to be chosen.

Some time after the selection of the delegates the managing committee for the district in which they act, calls a convention. The time which elapses varies from a few days to about four months in case of the national convention. Organization is effected through the proposal of a temporary chairman by the party managing committee, or by some delegate deputed by the committee, who calls the meeting to order and names a "Committee on Credentials" which forthwith examines the credentials presented by the delegates from the primaries, and admits those whom it deems duly accredited. A permanent chairman is then chosen and the convention is organized and ready for business. Upon a pre-arranged plan of the managing committee, those who are to come up for nomination are usually fixed beforehand, although any delegate may propose any person he sees fit and carry him on the required majority vote if he can. The convention sometimes, but not always, also amuses itself by passing resolutions expressive of its political sentiments; or if it is a state convention or a national convention, it adopts a platform, touching on, rather than dealing with, the main questions of the day. Having done its work the convention adjourns *sine die,* leaving other election affairs to be attended to by the committee.

The complexity of this nominating machinery is extreme. There are many primaries to be held, many delegates to be selected and instructed, many conventions to be called, and many candidates to be nominated. All this requires much time, much money, and many men willing to act as delegates, and many duties to be performed by the voters at the primaries. The perfect theory of representation upon which it is based is unfortunately worked out in a ponderous, complicated structure which tends to defeat the purpose for which it was created.

REFERENCES.

BECKER, CARL T. National Nominating Convention. Thesis University of Wisconsin. 1896.

DALLINGER, F. W. Nominations to Elective Office. Part I. 1897.

EATON, DORMAN B. Primary Elections. Amer. Cycl. of Pol. Sci., Vol. III.

HART, ALBERT B. Essays on Government. 1893.

JOHNSON, ALEXANDER. Nominating Conventions. Amer. Cycl. of Pol. Sci., Vol. II.

JULIAN, G. W. First Republican National Convention. Amer. Hist. Rev., Vol. IV, p. 312. 1899.

LAWTON, GEORGE. The American Caucus System. 1885.

MILLER, F. H. Nominating Conventions in Pennsylvania. Thesis University of Wisconsin. 1894.

MURDOCK, J. S. First National Nominating Convention. Amer. Hist. Rev., Vol. I, p. 688. 1896.

OSTROGOISKI, M. Rise and Fall of the Nominating Caucus. Amer. Hist. Rev., Vol. V, p. 253. 1900.

WHITRIDGE, F. W. Caucus System. Amer. Cycl. of Pol. Sci., Vol. I, p. 357.

CHAPTER II.

POLITICAL COMBINATIONS, THEIR NATURE AND THEIR CAUSE.

It has been seen that our caucuses and conventions form a complete and intricate system which is sound in theory. It admits of the representation of every locality, and of every voter in that locality, in the nomination of the elective officers of the government. In practice, it has proved since its adoption, more or less unsatisfactory. At the root of the matter lies the complexity of the system, which under modern conditions of social, economical, and political life, presents an almost ideal soil for intrigue and corruption. To this must be added as a cause of the increasingly difficult operation of the system the continuous increase in the number of offices to be filled under it. The first shortcoming is a defect in the machinery; the second results from the work it has to do. Both defeat the ends of the system, and nurse the life of political combinations and political corruption.

It is necessary to look into the cause of the development of political combinations, and of corrupt political leadership, as well as into their present position, in order to understand the reason for the unrelenting war for primary reform that is now being waged against these "political monsters."

It is a notorious fact that "one-man-power in politics" and its accompanying abuse and corruption, is fast growing stronger. Our caucus and convention system, once the servant of a sturdy democracy, now in general prac-

tice, remains its exacting master, the relations reversed in fact, and the original forms but a mask for selfish centralized control.[1] Why the change? An answer that strikes as a blow from the shoulder will undoubtedly dissipate numerous ideas as to the purification of our nominating system. It is not well to grow pessimistic, but many methods which have been suggested, it seems, would helplessly miss their mark because of a neglect to reckon with the practical conditions of politics as they confront us to-day. Many earnest reformers find in the evolution of the "machine," and in its rapid and unrestrained growth in this age of industrial development, a suggestion of the necessity of a complete reorganization of our nominating institutions to fit modern conditions more closely, and they hope to accomplish this through the institution of what is known as the "direct vote system" of nomination.

The position of the political combination is powerful and involved. Its strength lies in the complex conditions of politics which have made it possible. Like a weed it springs up almost spontaneously wherever it finds a nourishing soil. In a sparse population where few officers are elected, where salaries are small, and the affairs of government simple and transparent, political abuses rarely develop, and the complex nominating machinery works at no special disadvantage. This is well illustrated in most rural districts, where the gains to be derived from the control of caucuses and conventions and the coercion of officials are too small to encourage political manipulators in building up a political business. Hence it was, also, that during the early years of

[1] Hofer, American Primary System, p. 15. 1896.

its existence our nominating system worked fairly well, proving unsuccessful only here and there where the population had already been considerably concentrated in cities.

But with the enormous increase in population and wealth, which this country has witnessed; with the growth of cities, and the extension of interests, the defects of our nominating machinery have become more apparent, and have developed into positive evils fraught with real danger to the spirit of republican government. The complexity of life and the complication of activities, which this development produced, created a need for a more elaborate and thorough administration of government. The extension of governmental activity meant the creation of new offices, which multiplied at a rapid rate, and required the nomination of an increasing number of officials, who through some means or other, and by some body or other, had to be selected from the common mass, and brought before the people as qualified for the public service. This growing burden fell too heavily upon our nominating system.

With the tremendous industrial development which to-day is astonishing the world that produces it, other changes also swept in. Such hasty and abnormal growth carries with it a large unsettled population which fluctuates with the changing seasons. In this moving mass no lasting local ties are formed; no general acquaintance made; no local enthusiasm, or patriotism inspired; and no public interest aroused. Such a population of transient, readily-swayed, and often ignorant voters, falls an easy and too willing prey to the political worker and the "machine" politician.

Moreover, our industrial and commercial ambition and success are absorbing an increasingly large proportion of the best of our men in private interests. Wealth is produced as never before. The wheels of industry claim our greatest men. Commercialism is king to-day. As a result, our modern life has become too "strenuous," too complex, too chary of men's energies, to allow everybody to have a full hand in everything. Specialization is the key-note of effort. Men follow one particular line, and all outside receives but a passing glance, an occasional thought, or an indifferent effort. To-day we find men of business, of charity, of education, of law; and for the same reason also, men of politics. All struggle for themselves and by themselves. Each lives out his life and spends his energies in his own little chosen sphere. Few indeed will be found who in the long run will put themselves to much trouble for anything in which they have not a strong and direct personal interest. It causes much trouble to meddle in politics. It is a good deal of bother to make out a long list of candidates, requiring, if the work is to be well done, an intimate acquaintance with the nature of the qualifications necessary for the different offices, and of those possessed by the different candidates, as well as a constant watchfulness in political movements, for a competent candidate is often not "available." [1] It takes an up-to-date man in politics to "discover" the "logical candidate," and then to carry him safely through a heated campaign.

It is a considerable reflection upon the public spirit of a community to say that nine men out of every ten will leave the whole responsibility to the few who are

[1] Bryce, American Commonwealth, Vol. II, p. 100.

peculiarly zealous, or who have private interests of their own to serve; and it does not require much consideration to see that of these classes, the latter, having the most powerful inducements for activity, will be the most active. It is the "man with an axe to grind" who tries to manage the primary, and for this purpose he usually affiliates himself with a political "machine." It would, however, be unjust to the American citizen and would present a hopeless view of American politics to ascribe the failure to participate in caucuses and conventions entirely to a want of public interest or a selfish pursuit of riches. It is primarily due to the fact that under the prevailing method the work has become complex, the opportunities for corrupt practices manifold, inviting shrewd men of bad character to engage in running caucuses and conventions as a permanent and profitable business. Control is always possible with a well-trained, determined, unscrupulous, persistent body though but a small minority. They obscure the issue, mislead the unwary, cast suspicion upon the character of honest opponents, corrupt the frail, tempt the ambitious, intimidate the weak, and then by some sharp stroke at the crisis confuse and stampede the mass. To successfully contest with such men under such a system would require all of the time of many citizens and much of the time of a majority.

The tendency towards the monopolization of politics by a few men is particularly strengthened by the conspicuous absence of active opposition from among the ranks of the more educated and strongest members of society. Much has been said of late respecting the deplorable spirit among college graduates to keep aloof

from politics, and to permit men who in many cases have received but a casual education in the every-day school of life, while pursuing ways both good and evil, to grapple with the great administrative problems which confront us to-day.[1] This criticism was probably better founded some years ago than it is at the present time, yet it does seem to possess considerable point even now. In England and Germany, for example, such conditions do not exist. There the affairs of state are largely conducted by men who received their training in the higher institutions of learning.

Wherein lies the cause for this difference? Shall the blame be laid at the doors of our American colleges? Do they fail to inspire their students with high ideals of sympathy for their fellows, and of mutual responsibility for the conduct of public as well as of private affairs? Do they neglect one of their most important mis-

[1] In an interesting article in The Forum for June, 1893, entitled "College Men First Among Successful Citizens," President Charles F. Thwing shows that out of the 15,142 of our most prominent Americans mentioned in Appleton's Cyclopedia of American Biography, 5,326, or about one-third, are college bred. Since our college-trained men form but a relatively small part of our total population and yet form one-third of our men of fame, he comes to the conclusion that "college men rank first among successful citizens." That this should be the case is evident without demonstration. More important is the inquiry as to what proportion of our famous college-bred men have acquired distinction as statesmen in the arena of politics, where the capable citizen can perform the greatest service to his country. The statistics furnished by this same article show that out of the 15,142 famous Americans 1,310 acquired renown as statesmen, while but 499 of this number were statesmen with a college training. Hence, only about one-third of our *most eminent* public servants have come from colleges. If statistics were on hand to show what proportion of college men conduct the affairs of government in the less conspicuous offices found in our local political units, which in their totality are of immeasurably greater importance, and are far more vitally productive of immediate good or ill for the people, the investigation would probably show an unfortunate lack of college-bred men. It is especially in our municipal administration that the infusion of more college blood is desirable. Why it is not found there in its proper proportions at the present time, does not appear to lie so much with the reluctant spirit of the college man as with the repelling and exclusive methods of municipal politics.

sions,—the teaching of the duties of practical patriotism, and the inculcation of an ambition to contribute something for the purification of politics? Some of our colleges may fail to do so, yet one cannot help but think that in the main they are not delinquent in this high duty. Abundant occasions are offered in our universities for the study of public problems, abundant stimuli are presented to arouse interest in public affairs.[1] All our great political reforms find earnest and enthusiastic advocates among the men who occupy positions in our higher institutions of learning.

That the American student is alive to the public questions of the day, and is willing to identify himself with the practical and active side of politics, is demonstrated in many ways in the course of his college life. It finds its expression in the organization of political clubs, in the holding of enthusiastic partisan rallies, in the hiring of political speakers, in the publication of partisan college sheets, in the insertion of political news items in the college papers, in the participation of students in local elections. Here is unmistakable evidence that the American student is by no means indifferent to the affairs of government.

Must we not look elsewhere for an explanation of the seeming estrangement of higher education and the public service. What are the avenues that lead to public life to-day? Will ambition, coupled with scholarship and

[1] Yale, rather than Harvard with her literary pre-eminence, probably furnishes the spirit of what must continue to be the typical American college, says Prof. George Santayama of Harvard University. She is the mother of men, rather than a school of doctors. "The Yale principle is the English principle and the only right one. . . . No wonder that all America loves Yale, where American traditions are vigorous, American instincts are unchecked, and young men are trained and made eager for the keen struggles of American life."

capacity, take the college graduate into the cherished service of his country? Nine times out of ten the answer is probably no. He needs another and indispensable equipment in the form of a "pull" or "stand in" with the professional politicians who arbitrarily control the portals which lead to the country's service. If, perchance, he possesses their good will, he must either actively or passively connect himself with disreputable methods of politics, and must associate with the Crokers, Quays, and Gormans who degrade our political life. If fortunately, or unfortunately, he lacks their support, his chances for the realization of his hopes are slim, and he is likely to forego the expense and uncertainty of a struggle for office. Rather than join the band of reformers and prove, at least, his willingness to fight for his rights and for those of his fellows, the American college graduate seems to prefer to enter some more peaceful, enjoyable, and remunerative occupation, free from the painful severity of the reformer's life and relieved by more than an occasional reward of discouraging proportions.

Why wonder, therefore, that our institutions of higher education do not contribute to the stream of public life as they do in England or Germany. The difficulty lies not so much with the American collegian as with American methods of politics. In England and Germany, a thoroughly reformed and fairly remunerative civil service, and a generally high political morality, makes the course to the public service honorable and dignified and open to all alike who possess the ability to pass the examinations, or who have demonstrated their right to promotion through efficient work. There is no rea-

son to believe that if the college graduate of America were given as free an opportunity to enter the public service as is enjoyed by the German or English student, that he would not be as ready, or more so, to take advantage of it.

What we need to-day, therefore, is more reform,—the reform of our nominating institutions, which will restore to the people an effective vote, and through this the reform of our civil service. Reform can only be accomplished through the co-operation of all who stand for the high and noble in society, as was so well demonstrated in the recent struggle in New York. The college graduate must be a leader in this movement. If he contents himself with an occasional newspaper or magazine article urging reform, with a yearly platform oration denouncing Tammany politics, with a private shrug and shudder over the daily paper in the peace of his home, how can he expect his simpler brother with poverty-stricken mind and hand to come forward on election day in the cause of better government? The college man's apathy towards wrongful politics, his passiveness in reform, are a source of great strength to political combinations at the present time.

In conclusion, then, modern politics has grown too complex, its demands too many, to enable the business of politics to be done incidentally by the voters while they follow their trades or their professions. There are too many offices to be filled; too many committees to be appointed; too many candidates to be selected; too many meetings to be called. All this must be attended to by a special class of specially interested men, who expect reward for their efforts at the hands of the public. Hence,

as long as our caucus and convention system exists there will also exist a class of politicians who control its operations.

The cures proposed for this evil are many; those tried fewer; those wholly successful none. If, as is so generally conceded, complexity lies at the bottom of it all, then why not simplify the system? Why not redistribute the work of nomination among other, and more proper hands? Why not abolish the complex machinery entirely, and substitute a simple one, thereby dispensing with some of our professional politicians? The direct primary has been proposed since it is based upon simple principles incorporated in a simple system, thus avoiding the difficulties of our present nominating machinery. Its opponents declare it a failure. How far this is true remains to be seen.

Whichever way we look at it, a remedy to be successful must possess, as its cardinal virtue, simplicity. If in our laws of to-day the voices of only a few men control, if our public servants are the choice of only a few "bosses," then we must find a simpler, safer, and shorter way to our legislative halls, and to our public administration,—one which will make every man feel that there is nothing which will drown his voice, or defeat his will, and which will hold out the reward of an absolutely certain vote to him who enters a booth on election day and casts a thoughtful ballot.

Such a change would make government the business of every man, and would be most likely to effect a cure. For while there would still exist political leadership and political organization, each would act in its proper sphere. They would no longer be self-constituted. The

leader would no longer be the political monster who throttles opposition and rules by his own will. The organization would no more be the modern political "machine,"—the "American Juggernaut," managed, governed, and controlled by a few self-chosen, cunning, scheming, and ambitious politicians, masters of political chicanery for what influence, power, glory, and money they may be able to extract from official positions. Both would be the chosen instrumentalities of the people, and would exist as indispensable mechanisms in our political system. We must aim at their transformation from instruments of the few, and for the few, to instruments of the many, and for all. The leader shall not choose himself, but shall be the choice of all. Political organizations shall not only serve somebody, but everybody. When this shall have been consummated, reform will be complete, for the public official now master of the people will then have become the public servant.

REFERENCES.

ABBOT, LYMAN. The Machine. Outlook, June 15, 1901, p. 396.

BRYCE, JAMES. American Commonwealth, Vol. II, pp. 60, 68, 88, 89, 107–129. 1889.

DALLINGER, FREDERICK W. Nominations to Elective Office. 1897.

GEORGE, HENRY. Money in Elections. North Amer. Rev., March, 1883, p. 201.

GODKIN, E. L. Criminal Politics. North Amer. Rev., June, 1890, p. 706.

HOFER, E. The American Primary System. 1896.

IVINS, WM. B. Electoral Reform.

IVINS, WM. B. Machine Politics and Money in Elections in New York City.

ROOSEVELT, THEODORE. Machine Politics in New York City. Century, November, 1886.

ROOSEVELT, THEODORE. American Ideals and Other Essays, Chapter VI. 1897.

WHITRIDGE, F. W. Assessments. Amer. Cycl. of Pol. Sci., Vol. I.

——— Growth of Machine Power. Nation, September 6, 1900, p. 183.

——— Bossism. Outlook, January 16, 1897, p. 226.

——— Money in Election. Outlook, June 16, 1897, p. 227.

——— Machine Candidates. Outlook, January, 1897, p. 155.

CHAPTER III.

THE CORRUPT CAUCUS OF TO-DAY.

It is hoped that from the preceding general discussion of the main causes which underlie the development of political combinations, it is clear why modern politics is distinctly a field of business, engaged in by professional politicians seeking power and profit, and why our convention system no longer subserves its original purpose as a means for the nomination of candidates by a delegated popular choice, but has been reduced to a political mill, trod by the helpless voter, and grinding out a candidate whenever the political manipulator sets it in motion. The first step in this process is initiated in the caucus or primary, but before proceeding with the discussion, it may be well to consider the different terms used in connection with this institution, and to see what position it occupies in our political system.

By the term "caucus" was meant, primarily, a private meeting of voters, holding similar views, assembled prior to an election for the purpose of furthering such views at the election. With the development of parties, and the rule of majorities, the caucus, or some equivalent, became an indispensable adjunct of party government, and it may now be defined as a meeting of members belonging to the same party in any political or legislative body, held preliminary to certain legislative action, for the purpose of selecting candidates to be voted for, or for the purpose of determining the course of the party in some legislative proceeding. In our ordinary political vocabulary the term "caucus" is used in an even more restricted

sense, being confined to meetings of local party committee-men, either directly or indirectly, through delegates.[1] The term "primary" or "primary election" is also used interchangeably with "caucus," although it is fast supplanting the latter in certain parts of the country. In country districts, generally, excepting in counties and States where some form of direct primary election is held, the term "caucus" is still quite generally used. In cities the increase of the safeguards which have been found necessary in the attempt to secure better protection of the caucus, have surrounded it with so many formalities that it is rapidly becoming known as the primary or preliminary election.[2] Our caucus or primary system, as already indicated, therefore lies, theoretically, at the basis of a complete electoral system which has grown up within each party independent of statutory enactment, and side by side with the subsequent proceedings which are provided in the general election laws and are given a complete legal setting through the enactment of the Australian ballot legislation.[3]

The degeneration of the caucus, so marked in recent years, has resulted in a reform movement for legislation through the application of the main principles of the Australian ballot system, and the expansion of its functions, by granting to the individual members of each party the privileges of a direct exercise of the power of nomination for all elective offices. To this movement the most important chapters of this treatise will be devoted. Before entering upon its discussion it is necessary, how-

[1] Lalor, Amer. Cyclopedia of Pol. Science, Vol. I, p. 360.
[2] Ibid., Vol. I, p. 356.
[3] Wigmore, Australian Ballot System. Introduction. 1889.

ever, to look into the position of the modern caucus or primary and to study its relation to the forces which are operating in modern politics for good and for evil.

Nowhere is the professional politician more active than in the caucus, for when success comes here it is absolute. It is in the caucus alone that he comes directly in contact with the voter. Should he fail here, to persuade or deceive the voter into a support of his candidates, he can only direct his energies and efforts for political manipulation to the subversion of the delegated authority of the voter before it is exercised in the convention. Should he succeed in the caucus all is gained, for the delegate will from then on be his, and generally will stand firmly for the candidates presented by him.

Since the primary or caucus is the most fundamental unit of our political system, it is also the most important. It is here that the first step in the process of election is inaugurated. It is here that the preliminaries of nomination are opened. It is the source of the spring that leads to public service. If the source is impure, it will corrupt all the waters that mingle with its onward-coursing stream. The delegates of a corrupt caucus or primary carry their wrongful influence into every convention in which they sit, and whatever safeguards may be thrown around the convention, these delegates will nevertheless stain its action as a representative body, and vitiate its true results as an exponent of the peoples' will.

Hence, if we wish to purify our nominating system, we must begin at the primary or caucus, where the impure source of corruption must be cut off. But this alone is not sufficient. There remains the convention.

This institution itself gives rise to certain evils which tend to defeat representation and the cause of good government. Here, as in the primary or caucus, fundamental reform is necessary, but it is in the latter that the first step must be taken.

If the preceding is the *order* of reform for the purification of our nominating institutions, what must be its nature? That corruption often despoils our primaries and conventions of their fruits cannot be doubted.[1] That they are not uniformly corrupt is equally true, but that corruption at some stage of their complicated proceeding is becoming notoriously prevalent will not admit of dispute. Their present condition is so serious that it may well arouse the alarm of thinking men.

The corruption of the caucus is not a thing of the present alone. It did not fall upon us as a sudden curse. Far back in our early history some of the same evils which surround us now existed where the population was concentrated and where wealth abounded. To-day these conditions are more widespread, more aggravated, and more dangerous, because of the greater concentration of population, the greater accumulation of wealth, and the participation of corporations in political affairs and legislative proceedings.

It is in the cities and manufacturing districts that the primary first yields to corruption. The opportunities for it are greatest there. Political work is more complicated and more controlling in results than in small communities. The average man in the city believes that it is but a waste of time to attempt to cope with the politician in the primary or caucus and he abandons his

[1] Hofer, American Primary System, pp. 10–36. 1896.

political duties and surrenders his individual responsibilities because he regards his personal effort of so little importance in attempting to overcome so great a wrong. "Officers are well paid, the patronage is large, the opportunities for jobs, pickings, and even stealings are enormous." [1] It is worth while for unscrupulous men to control nominations where such great prizes are to be won.

The country, on the other hand, is more protected. There life is simpler, purer, and freer. There every man is every other man's neighbor or friend. Local offices are few and their control brings with it little glory and gain. For these and other reasons the country districts have to a greater extent than the cities escaped corrupting influences in the control of their caucuses. In the nomination of state, congressional, and legislative candidates, however, the professional politicians and the agents of the corporations do not overlook the country caucuses, and owing to the fact that the means of communication are more difficult, they are often able to deceive and mislead the voter with reference to issues and candidates.

While the corruption of the primary has been gradually increasing with the growth of the nation, it was indirectly given an additional impetus through the institution of the Australian ballot system.[2] The election without strict legal regulation had been a failure. The legalized rule-regulated election governed by the Australian ballot system was proving a success. The caucus or primary without rules was also proving a failure. Why not apply rules here as well? The process appeared

[1] Bryce, American Commonwealth, Vol. II, p. 100. 1889.
[2] Review of Reviews, May, 1893.

simple, rules were drawn, and there rose the rule-regulated caucus. But this proved a failure in the end. The reason lies in the fact that the rules were not prescribed by the State as in the case of the Australian ballot system, to secure expression of individual will, but by the party leaders or "bosses" to insure their own control. Moreover, it was found true that no rules or statutory regulations could prevent the tampering with the delegates after they were chosen in the caucus, no matter how well its proceedings were regulated.

The system worked well or ill, just as the rules were good or bad, stringent or elastic. The right of prescribing them was an important one, since they were to have the force of law.[1] A struggle began for this power. The victory generally came to the professional politicians or to the "machines" within the parties.[2] These being but human, selfish purposes suggested selfish means. The regulated caucus or primary had already been amended into a "regular" caucus or primary, which alone was declared to be the golden portal leading to nomination and to public service. The victorious political leaders resolved to entrench themselves still further. "Regularity" being already the open sesame to nomination, they decided to further regulate "regularity." The legitimate nominating machine was in their hands, and they betook themeselves to so adjusting its working that only their favorites should be turned out as candidates for office. New rules were made for the choice of primary election officers; for the determination of party membership; and for the time and place of meeting. Old rules

[1] Remsen, Primary Elections, p. 35. 1894.
[2] Hofer, American Primary System, p. 57. 1896.

were easily amended or abolished. As a result the caucus came to be conducted by party "bosses"; controlling party membership was reduced to "boss heelers," and meetings silently betook themselves to back alleys and up flights of stairs. Thus it came to be that the primary, especially in our larger cities, became small, "select," and "regular."[1] Thus it was, that this institution, which in theory is the most democratic of all our institutions, came to be the most undemocratic in practice.

The evolution of the corrupt caucus or primary was the logical outcome of the false application of the principle of rule-regulation. A primary election no less than a general election is too important and involved to be conducted free of all rules. But rules alone are not sufficient. Far more important is it to provide the proper power for their prescription. The rule-regulated general election held under the Australian system was a success not only because it was legalized, but because its rules sprung directly from the State. The rule-regulated primary was a failure, in part at least, because it also was legalized, while the rules which were clothed with the force of law as a result of this legalization, did not spring from the State, but were created by the party and virtually by the "boss" or "machine" which controlled that party. Thus the rules became a most powerful instrument for the development of one-man-power in politics, and left the primary a broken institution.

Those who to-day resist the enactment of caucus laws or primary laws upon the ground that such laws are undemocratic, and an infringement upon our prided American liberties and upon the free action of our political

[1] Bryce, American Commonwealth, Vol. II, p. 101.

parties, occupy a mistaken position. If the parties fall as helpless prey into the hands of men within their own ranks, then certainly the time is at hand for a higher power to step in and rescue the parties as well as the people from these ambitious and unscrupulous tyrants.

In another way, also, the Australian ballot system has indirectly increased corruption at the primaries. It has turned the stream of corruptive forces back from the election to the nomination. Much of the evil formerly incidental to election day has been transmitted to the primaries. The vicious practices, no longer possible at the polls under the Australian ballot laws, are now employed in the caucus and nominating convention with an energy unparalleled in the past.

In many States the purification of the primary has been undertaken in earnest, as is evidenced in the general enactment of primary laws. These laws vary from the most rudimentary beginnings, found mainly in the Western States, to more complicated and detailed systems, such as those of Massachusetts and Wisconsin. Much good has come from some of this legislation, but very much more remains to be accomplished. Experience has demonstrated that the most thoroughly legalized caucuses are nevertheless subject to corrupt influences. The versatile politician will ever succeed in locating a sufficient number of loopholes in any law which perpetuates and attempts to regulate caucuses and conventions, to enable him to manipulate his "wires" successfully.

The devices resorted to for the corruption of the caucus or primary are innumerable. Among the most familiar are: The packing of caucuses; the organization of

political ward and district clubs; springing "snap" caucuses (that is with short notice or none at all); holding primaries in out-of-the-way or disreputable places; having beer in a side room where the "boys" may be taken around for a promised treat after the primary; putting out lights and knocking with clubs and fists in the dark;[1] cutting off debate by resolution and rushing the nominations; electing such inspectors as will "see to it" that the "right person" is "counted in"; using tissue paper ballots; bolting a nomination and holding another primary or caucus; or resorting to the cut-and-dried method of combining and prearranging the work and having the "slate" for nomination referred to a committee appointed by a chairman put up by the "ring" having the plot in charge.[2]

In this way a small band of "workers" may defeat a large majority of voters who have no organization. And in case these and other tricks fail to accomplish the purpose of the conspirators, they will bribe, with promise of office, employment, or fat job, or with cash in hand, so many of the "unfixed" members as may be needed to effect their purpose. It is true that all the methods here enumerated are not practiced everywhere or every time, but it is a notorious fact that our modern primary is, in spite of numerous attempts at reform, still the scene of much disgraceful political chicanery and corruption.

Here lies an explanation for much of the apathy shown by the average voter towards the primary. It is clear why he does not care to attend. Many a time he can perform no useful function there. Frequently he is

[1] Hofer, American Primary System, p. 34. 1896.
[2] Lalor, Encyclopedia of Pol. Sci., see "Primaries."

a mere puppet which casts a ballot that counts for nothing. His definite preference for a candidate is nullified. He has no choice, no freedom of individual action, but is bound by the will of the "boss" and "machine." As a result he stays at home. It is no particularly interesting or agreeable task to defeat one's own wishes by casting a useless or misdirected ballot at a primary which may be held in such disreputable quarters as would inspire a respectable man to remain away.

This stay-at-home spirit is a most deplorable one. It springs from a disgust with government. It is the fruit of perverted democracy. In some cities less than thirty per cent. of the voters cast a ballot, and in twenty-four of the largest cities barely half of the voters go to the polls. The stay-at-home vote increased in Pennsylvania from seventy thousand in 1888 to six hundred and ten thousand in 1895; in New York from seventy-five thousand to five hundred and ten thousand; in Massachusetts from eighty thousand to two hundred and thirty thousand; in Ohio from forty thousand to one hundred and eighty thousand.[1]

Such conditions are not compatible with political liberty and equality. Yet the accusing cry that comes from the masses is often weak and uncertain. Generally, a citizen's interest in politics is measured by the representation which he feels he has in government. Deny him a voice in government and his interest ceases. Such an attitude is too passive in tenor. Not only should there be interest where there is representation, but there should be sufficient interest when representation is denied to fight for it, and to struggle for the recovery of

[1] Pomeroy, Eltweed, Arena, April, 1897.

the place which a republican government promises to every citizen. Such interest is lacking too often.[1] Modern experience goes to show that very frequently the voter not only does not resent such a flagrant denial of his just rights, but being deeply occupied with private affairs, permits unscrupulous demagogues and professional politicians to usurp them unquestioned and uncondemned. He is too often satisfied because the same "charm of regular nomination," to which reference has already been made in connection with the influence of the legislative and the congressional caucuses, holds over him and prevents him from seeing, or trying to see, anything wrong in the candidate who has been "regularly" chosen, though his wishes may have been entirely disregarded or lawlessly defied in the process.

This criticism is however not entirely just if made without reservation and without a recognition of the practical difficulties which beset the voter in an effort to maintain his rights to share in the nomination of candidates. It is so easy to throw back upon the citizen entire responsibility for the loss of which he complains. It is a sort of argument which silences protest and which especially satisfies the superficial. It involves very much less labor than to grapple with the ugly problem. But what is the significance of the figures given of the falling off of the votes at the caucuses or primaries in the last twelve or fifteen years? Whoever has participated in or intelligently observed the contest between the great body of citizens and the perfected modern political "machines" in this and other States, has witnessed a protracted and heroic struggle on the part of the citizen to

[1] Hofer, American Primary System, p. 55. 1896.

maintain his citizenship. Again and again have the drilled and disciplined politicians overcome the majority, or when that chanced to fail bought the delegates outright in the conventions. The best troops the world has ever seen have been utterly demoralized as a fighting power after repeated defeat. A half million voters in a single State are not driven away from participation in primary elections without adequate cause. The descendants of the men who fought to establish independence and later to preserve the Union, are not cowards, neither are they dully indifferent to the highest privileges of citizenship. They have been beaten and driven from the field time after time by forces inferior in numbers, but more powerful than armed battalions. The contest is as unequal and hopeless upon this field, and under existing conditions, as it is when hosts armed with the old muzzle-loading Springfield rifle are marshalled against a small compact body equipped with the machine guns of to-day.

Neither is it true that the "charm of regular nominations" maintains its former potency with all classes of voters. The citizen at the general election is asserting his individual preference. The years from 1884 to 1900 have witnessed the political supremacy in national administration change with each recurring election, excepting the last. In state, congressional, and legislative elections the independence of the voter is more and more asserted. The overwhelming majorities of former years have disappeared or become so uncertain as to demonstrate that where the voter has been denied a voice in the selection of party candidates the "regular caucus and convention nomination" no longer compels the old-time

party support. At the primary election, also, the increasing strength of the independent candidate who has been defeated in a regular "machine-controlled" convention, testifies to a growing freedom and independence of thought on part of the voter. This is a welcome sign of political reform. Like a wand, independent thought breaks the spell of regular nominations and awakens the voter to the dangers which beset him as a citizen.

REFERENCES.

BRYCE, JAMES. American Commonwealth, Vol. II, pp. 84–89, 93–104. 1889.

DALLINGER, F. W. A Word about the Caucus. New Eng. Mag., August, 1893, p. 754.

EATON, DORMAN B. Primary Elections. Amer. Cycl. of Pol. Sci., Vol. III, p. 343.

FIELD, D. D. The Primary, the Pivot of Reform. Forum, October, 1892, p. 189.

GODKIN, E. L. The Caucus and the Republican Party. Nation, July, 1868, p. 4.

GREEN, G. W. Facts about the Caucus. North Amer. Rev., September, 1883, p. 257.

HOFER, E. The American Primary System. 1896.

HOFFMAN, E. F. Primary Elections. August, 1881, p. 602.

LAWTON, G. W. The American Caucus System. 1885.

MEANS, D. M. Trouble with the Caucus. New Eng. Mag., July, 1875, p. 473.

MERWIN, H. C. Tammany Hall. Atlan. Mo., February, 1894, p. 240.

REMSEN, DANIEL. Primary Elections. 1894.

SEDGWICK, A. G. Legalization of Caucuses. Nation, February, 1869, p. 86.

STICKNEY, ALBERT. Democratic Government. 1885.

THAYER, ADIN. Speech on Caucus. Boston Herald, Oct. 9, 1881.

TYNG, T. MITCHELL. Tammany from Within. Tammany Hall Souvenir, N. Y., 1893.

WHITRIDGE, F. W. The Caucus System. Amer. Cycl. of Pol. Sci., Vol. I, p. 356.

WIGMORE, JOHN H. The Australian Ballot System. 1889.
WILLIAMS, TALCOTT. Tammany Hall. Amer. Cycl. of Pol. Sci., Vol. III.
——— Movement for Better Primaries. Rev. of Rev., May, 1898, p. 57.
——— The Caucus System in the United States. Christian Examiner, September, 1869, p. 139.
——— The Caucus. Fortnightly (N. Amer. Series), November 1, 1878, p. 721.

CHAPTER IV.

THE CONVENTION IN ITS BEST DAYS.

The modern convention is the cause of much strife among our political speakers and writers. Its value is questioned; its life threatened. It has many enthusiastic supporters and many earnest opponents. It is assailed in uncompromising terms and defended with eloquent eulogy. This conflict means that something is wrong.

Whatever may be said of the present state of this old institution, it ought not to be condemned upon superficial and insufficient grounds. There can be no doubt that in the course of its time-honored existence it has been of inestimable service to this country. Its evolution which has already been traced shows that the forces which created it were democratic; that it arose as the servant of the people. If it has turned false to its mission, the power which created it will also destroy it.

To-day the struggle is on. Whether it is the final one to the death lies with the future. The quest is still, as ever, for truer and purer representation. As in the past our nominating institutions have conformed to the times and the tenor of the people, so may the convention system of to-day be changed or wholly abolished. The mere fact of its long existence does not argue for continued life. Before taking up the discussion of the present condition of the convention, it is well to look at the advantages of this institution under ideal conditions, or at

least under such conditions as have enabled it to operate to its best advantage. These are often utilized during campaigns to blind the public when justness and fairness would demand a closer adherence to actual conditions.

Theoretically the convention system is perfect. It passes the highest test of a political institution in a democratic community. It admits of the purest application of the principle of representation or delegated authority. Step by step the voice of each individual voter can, in theory, be transmitted from delegate to delegate until finally it finds its perfect expression in the legislature, the executive, or the judiciary. The nearest approach to such ideal conditions of operation was reached by the convention system during its early days.

As a party institution, the convention once occupied the highest and most important position. When so conducted as to command the confidence and respect of the party, it was the foundation of party success. Within it there sprang up the central moving figures of the campaign. It contributed to bind party elements firmly together, and to inspire enthusiastic party life, and thereby performed a valuable service in the cause of government.

That political parties are essential in politics to-day, as in the past, cannot be questioned. They seize upon public problems, discuss the public policies, analyze laws, study administration, scrutinize the acts of public officers, and search their ranks for faithful public servants. They criticise each other's doings, and observe all political movements with microscopic accuracy. Organizations which serve such purposes may well live on, and

institutions which have promoted their vigor may well be defended.

The convention was the foundation of party success, because it furnished an excellent opportunity for the perfection of party organization, as well as for the prosecution of a vigorous campaign, in which all party forces were formed in line and operated with united power for a common end. It afforded an excellent opportunity for the estimation of a party's strength, for it was composed of men from every locality, and from every part of the State. Usually these were representative men, fully cognizant of party conditions in their home community. Through their conference the standing and fortunes of the party were ascertained, and the party policy shaped accordingly.

It also afforded opportunity for the estimation of a candidate's real popularity. Fatal mistakes were sometimes avoided by the timely substitution of new nominees for intended candidates, whose standing with the party masses had been misjudged. A party to be successful must offer to the public men who will be well supported, and upon whom the people are willing to bestow the title of a public servant. Such candidates could well be chosen in a gathering of party men, representing all geographical areas, all interests, and all factions covered by the election.

It has also happened that in conventions an "undiscovered" candidate of good parts and popular quality was successfully advertised and came before the electorate in time to win success for the party. A capable man, who was unknown to the mass of party voters, and who might possibly have remained unknown too long to be of

service to his party, has been accidentally so discovered and nominated, and his party and the public well served by him.

Likewise, also, men of special merit have found in the meetings of delegates fortunate opportunities for acquiring prominence without great loss of time or money. To these time is often more important than money. The necessary personal advertising required for a preliminary canvass, aside from its disagreeable features, would have consumed a forbidding amount of time if done with sufficient thoroughness to insure a nomination; while many a young man of ability would have found the drain upon his finances in conducting a protracted personal campaign too severe to enable him to win the day for himself in the usual way.

A harmonious party convention has always presented excellent opportunities for arousing party enthusiasm. Under such conditions partisan meets partisan, speeches are made and heard, the party enthusiasm of the North greets that of the South, the party cry of the West mingles with that of the East, party spirit rises to its height, and inspires its color bearers to act their best. Not only would party fires flame up in such conventions, but each of the delegates returning to his community warmed with the spirit of party enthusiasm, would reinforce the local campaign with renewed vigor, and would rally his wavering friends to freshened efforts and stronger party affiliations.

The convention at its best, has also afforded favorable opportunity for the conciliation of party factions. Unity within a party is absolutely necessary for success, unless the minority parties are unusually weak. This unity has

always been difficult to maintain. It is natural that party leaders should differ in their conceptions of what would be the best party policies. Each stands at the helm of the party in his own locality, and has his own little band of followers. Each develops his ideas in the light of his home, and rallies to his standard the partisan friends of the neighborhood. Some day they must clash. That day comes with the opening of the preliminary campaign. The party platform must be formulated, and the party candidates selected. Differences must be adjusted and compromises must be made. The convention when assembled and conducted as a deliberative body controlled by its best elements for the greatest good, would be an ideal place for settling such differences, diminishing the chances of party bolting, because the consummated conciliation would be a general one, effected in the presence of the main party spirits, and hence, as a rule, binding and abiding.

The ideal convention would also enable the selection of representative men who would receive the most general support of the party, because proper emphasis could be placed upon the following important elements of party success: Geographical distribution of the candidates; their nationality; their social standing; the class represented; the commercial, industrial, or agricultural interests, etc., that they stood for; the shades of political ideas entertained,—all these matters could be duly considered.

Such a convention would be the place where the party platform could well be formulated. It would be a deliberative and thoroughly representative body, where every locality, every faction, every class, and every in-

terest would find a voice in the meeting. It would be a decidedly up-to-date body. Its delegates would have been but shortly elected, and in a position to define party issues intelligently. The platform which they framed would have the general confidence of the party, and operate as a binding element on dissatisfied members.

The convention thus, in theory, lies at the foundation of party success. It perfects party organization, measures its strength, conciliates its factions, defines its issues, selects its candidates, and arouses enthusiasm. For these many reasons its advocates still regard it as a most valuable instrument in the hands of the party.

In its best days the convention does not seem to have favored any one party more than any other. Its advantages seem to have come to all. The dominant party was not maintained in power by it. Great leaders came forward in the ranks of the minority, for the possibilities of a vigorous campaign stood out clearly. The minority party could thoroughly gauge its strength through its assembled delegates, who could also fairly estimate the strength and chances of their opponents. Any reaction or weakness could be recorded, and the enthusiasm and hope of success inspired. Under such conditions the weakest party may find a convention in session a life-sustaining power that may be made the living exponent of the courage and fire of good sound issues, which, if they be properly brought before the public, will attract attention, and may lead on to victory.

In its best days the convention was also a school of practical politics. In it the youth of the rising generation, who were to control the destinies of the Nation, were taught the earlier and simpler lessons of practical

politics. They learned to know the constitution and operation of our nominating machinery, and received an insight into the inner workings of party politics. Such experience cannot but prove of great worth to men who in the future assume public leadership and occupy positions of importance in the public service.

It is evident, then, that in theory, or when at its best, the convention possesses a large capacity for performing valuable services to the individual, to the party, and to the State; and that it has occupied a very important position among our political institutions. However, we must remember that in speaking of its merits in the foregoing pages, ideal conditions of politics are assumed, or, at least, such conditions as would admit of its operation in a manner so as to produce all possible advantages. Actual conditions, as will be seen in the succeeding chapter, alter the case considerably. The present study has, however, revealed the fact that the convention yields certain positive advantages to political life which corruption in its worst forms can alone destroy; hence none but the most weighty of reasons can justify its abolition or its displacement by some other institution. Whether or no such reasons exist is the subject of the next inquiry.[1]

[1] For references see next chapter.

CHAPTER V.

THE MODERN CORRUPT CONVENTION.

The merits of our convention system as enumerated in the preceding chapter, as already emphasized, abound only where politics are pure and normal; where every member of the party has a full voice which he can delegate to men who faithfully represent his wishes in the performance of all the functions of a convention. Such conditions are generally lacking at the present time. Where the "machine" controls politics the voter has ceased to speak in the convention. His voice is lost in the course of its transmission. The delegates are not representative of a body of citizens, but of a narrow ring of politicians. The convention is not the mouthpiece of the people, but of the "machine," and that fine theory of representation of which it seems so perfect an embodiment falls flatly to the ground.

It would seem but natural that the corruption of the convention should proceed in much the same way as did that of the primary. Its vulnerable spots are laid bare under very similar conditions of life. Dense populations, prosperity, and wealth, have destroyed its efficiency as they did that of the primary. It is in New York, Philadelphia, Pittsburg, Chicago, and other great cities of this country that its evils are most glaring and its enemies most numerous and bitter.

How far the perversion of a convention's representative character will proceed, depends upon its nature;

upon the importance of the offices for which nominations are to be made; upon the localities represented in the convention, whether urban or rural, or both; upon the place of meeting; upon the lapse of time between the choice of the delegates and their meeting; and above all, upon the character of the delegates selected.

The evils which find their way into conventions as determined more or less by these factors, may be grouped into two classes,—those which are due to the corrupt primary upon which the convention rests, and those which spring directly from the convention. The latter may again be subdivided into those resulting from the operation of external corrupting forces, which are due mainly to political combinations, and those arising from internal corrupting forces, such as personal considerations and moral weaknesses of delegates. The latter are given much leeway because of the complexity of the system; the difficulty of binding delegates with definite instructions; the use of proxies; and the impossibility of selecting so large a number of men as the convention system requires who are all of a desirable stamp of character and ability.

As to the first class of evils, it need only be said that much of the corruption which is found, cannot be entirely attributed to the convention, but finds its source in the impure primary which precedes it, for where the primary has fallen, the convention must follow because of the injection of its corrupt delegates. Where the representative character of a convention is defeated in this manner, the blame cannot justly be laid at the door of the convention in which the corruption crops out, but lies with the unsound primaries upon which it is built.

There are, however, certain evils inherent in the nature of the convention considered independently as an institution, which alone tend to defeat its democratic character no matter how pure the primaries may be. Even though the voter's voice carries safely at the primary, even though he succeeds in getting delegates of his liking, it often happens that his wishes are ignored, forgotten, or traded, before they can find a faithful expression. To this extent the convention is an imperfect institution. It cannot be reformed, because remedial legislation merely reaches functional troubles, and the principal trouble with the convention is not functional; it is organic.

We may first study the evils which surround the convention as a result of external corrupting influences. They vary widely with the localities. They depend upon the activity of the "machine" politician, and the delegates who are to be "worked." Three classes of delegates may be distinguished in conventions: The "fixed" delegates who represent the "machine-controlled" primaries, and who are found to a greater or less extent in most of the conventions held in this country; the faithful and independent delegates of a staunch and incorruptible character, who faithfully express the wishes of their constituents, and who would do so under any conditions; and between these extremes, a wavering class, which is more or less susceptible to corrupt influences. In its ranks the havoc of evil runs riot. Its presence makes the activity of the professional politician profitable beyond the confines of the primary. If he has failed at the latter another opportunity presents itself at the convention. If the "machine" lacks a sufficient number of

adherents to control the nominations at which it aims. there is still a chance to win over these "workable" delegates before the convention has performed its functions.

The political worker is aided in his schemes of bribery and corruption by the complexity of the convention system. The multiplicity of offices to be filled, and the variety of their grades, including those of the town, city, county, State, and Nation, each of which requires its own particular set of conventions, has given rise to a bewildering intricacy in our nominating institutions.[1] In some cases delegates to higher conventions are selected by delegates to lower conventions. All this intricacy, which confuses the average voter, makes proper instruction almost impossible, lessens the responsibility of the delegates, and eases the way for the professional politician who has thoroughly mastered its details, and enables him to manipulate his forces successfully.

The complexity of the system also gives rise to a second advantage for the "boss" and the ring-leader. The numerous conventions require a number of delegates so large that it is difficult to find a sufficient number of good men who are willing to act. Successful business men, or professional men, generally refuse to act because of lack of time, while capable men of leisure frequently refuse upon the ground that it is humiliating and undignified to attend a convention dominated by the "machine," and there find the wishes of one's constituents entirely ignored. Hence a class of fickle politicians who spend their time in politics for what they can get out of it, are likely to find their way into the con-

[1] Bryce, American Commonwealth, Vol. II, pp. 85 and 89. 1889.

vention halls, where they constitute plastic material in the hands of the deputed convention workers of the "machine."

The custom of sending proxies is also fraught with much evil in that it removes the responsibility of the original delegate to his constituents. He may yield his seat in the convention to his proxy, to escape disagreeable business, or for one pretense or another allow him to take his place. The "machine" may by contrivances and intrigues, aid in the process, especially if the proxy is already "fixed." It is a usual subterfuge to head a delegate ticket with the name of a man of known probity, and perhaps even to fill out the list with men of this character, when it is certain that these men will not serve, and that unknown alternates or proxies, subservient to the "bosses," will sit in the convention.[1] Thus it happens that the practice of proxyship plays right into the hands of the professional politicians.

The "machine-controlled" committee of credentials is also a source of common and glaring frauds in conventions. It is a means by which the first class of delegates, the staunch and true and "unworkable" representatives of the people, are prevented from taking their seats in the convention upon one pretense or another, while the "machine" proxies are put in their places.

Similar grave results may proceed from the practice of instruction for second choice, for it also presents the opportunity of dropping the candidate of first choice upon one plea or another, if "trading" or "logrolling" accompanied by personal advantage should make this expedient. Every practice of this kind which increases the

[1] Arena, June, 1897.

freedom of the delegates, weakens the force of their instructions, and increases the possibility of "machine" control.

Since considerable time usually elapses between the selection of the delegates and the assembly of the convention, the chances to defeat the wishes of the people are only too ample. The pressure that is brought to bear upon delegates through personal influences, political prestige, use of money, threat, and cunning duplicity, is tremendous and well-nigh irresistible, unless indeed the heart and mind are firmly fixed beforehand.

Again and again we find disgraceful instances of delegates who in the hour of temptation fail in strength, and sacrifice their honor as well as the sacred trust confided to them by their constituents, for money, office, or political advantage. Experience has shown that in conventions at which candidates for the most important public offices are chosen there have been a sufficient number of weak or corrupt delegates who could be bought with gold to enable the political cabal to control nominations. Indeed, it may be said that the more important the convention the greater the inducement to buy delegates, and the greater the certainty of their being bought. Instances of the purchase of delegated votes in city conventions are notorious and appalling. Their mere enumeration would fill many pages, and their details ought to bring a blush of shame and indignation to the cheeks of every patriotic citizen.[1]

From within also fatal influences are at work gnawing at the purity and the life of the structure. Personal considerations, ranging from the highest to the lowest

[1] For an everyday illustration, see Outlook, December 8, 1900, p. 861

will sometimes intervene between the wishes of the voters and the choice of the candidates. It is perhaps not too much to say that the average delegate hopes to have his personal fortunes affected by the selection of this or that man. He endeavors to work his way in the convention in that direction in which he can at the same time best work his constituents for future support. That this should be a strong and even predominant motive on the part of many delegates in the selection of candidates is but natural. The position of the delegate is purely honorary and requires much time. Men of business frequently refuse to accept it for this reason. Hence, the men who serve usually are in politics for purely selfish purposes. Not that they always and necessarily entertain ideas of corruption, but that they work for a political future, or hope to earn public reward from their constituents. Hence, the delegates who do not fall as prey to the "machine," are strongly tempted to become the victims of their own selfish aspirations.[1]

The wavering delegate who hesitates to yield himself to these personal considerations, is strengthened in his wrongful tendencies, as already suggested, by the fact of indefinite or uncertain instructions, or their total absence. Even though the voter knew in each particular

[1] The system in all its details is inherently bad. It not only favors, but, logically and inevitably, produces manipulation, scheming, trickery, fraud and corruption. The delegate elected in caucus is nominally the agent of the voter to act for him in convention. Too frequently he has his own interests alone at heart, and, for this reason, has secured his selection as a delegate. As a consequence, he acts not for the voter, but serves his own purpose instead. This fact in itself taints the trust from the outset, and poisons the system at its very source. No legitimate business could survive under a system where authority to transact its vital matters was delegated and redelegated to agents and subagents, who controlled their own selection, construed their own obligations, and were responsible to nobody. Gov. Robert M. La Follette's message to Legislature, 1901.

instance just what candidate he wished to vote for, and what delegate he must support to do so, he would still be involved in perplexities occasioned by the multitude of offices to be filled in some cases by each convention.[1] He might be able to make up a ticket of delegates who would all be favorable to any one of the candidates he desires to see nominated, but such is the variety of opinions that he would find it impossible to name a list of delegates who would be unanimously favorable to his choice for every one of a number of offices. To this must be added the almost boundless confusion which would result should he endeavor to instruct each delegate as to first and second choice. Hence it would be quite impossible for him to charge each delegate with definite instructions as to each candidate to be nominated. Only very general instructions proceeding on a party basis are possible.[2]

Aside from all these disadvantages and difficulties, springing from the convention, there is also the fact that instead of being a peaceful reasoning body where party policies may be carefully weighed, and party issues thoughtfully defined; where the relative merits of proposed candidates may be thoroughly discussed, and the platform drawn from the best sources of calm thought, it is often the scene of the wildest demonstrations, where party issues are "cooked and dried" beforehand by a few self-constituted leaders and then yelled into a platform in frenzied excitement; where opposition melts under the eloquence of magnetic speeches; where the most

[1] Bryce, American Commonwealth, Vol. II, p. 95. 1889.

[2] This objection holds only where the same delegates nominate a number of candidates; as, for instance, an entire state ticket. It could easily be overcome by a direct exercise of his choice at a primary election.

sacred wishes of the people are forgotten under the power of the crowning orator who paints the glories of his favorite, or springs the "dark horse" or unknown candidate, and sees him nominated amidst storms of meaningless applause. Sober, sturdy thought cannot abide on such occasions, where emotion, instead of reason, rules. Why wonder that when the day has passed and an accusing voice calls the faithless delegate to account, he is mute, and stupidly shakes his head in perplexity at his own doings! Where feelings run riot as they so commonly do in our modern conventions, their proper function as rational, deliberative bodies is entirely destroyed.

These inherent weaknesses of the convention system have been the cause of its decline. Under the influences of the many corrupting forces which ever play in politics, it has gradually degenerated. Its representative structure has been broken down, and upon its ruins there has been reared a new and despotic institution dominated by an unscrupulous "machine" that has forced its way into party leadership, and falsely presumes to act in the interests of its members.

This change, wherever it has been consummated, is fatal to the party, to the people, and to the institution. The convention may continue to exist under such conditions, but it has lost the function for which it was called into existence, and hence deserves to be destroyed. It has lost its democratic spirit, for the voter no longer speaks in its halls. It has left the party powerless. Its advantages in developing party organization, and its aid to party success, have been transferred to the "machine" which has made itself the party's mouthpiece. Instead of being the stronghold of the party, it is the stronghold

of the "machine." Instead of being the servant of the people, it is the servant of the "boss." It affords opportunities for the "machine" to estimate its strength; to weigh the popularity of its candidates; to "advertise" and "push good material"; to arouse enthusiasm among its "workers"; and to bind the "iniquitous brotherhood" of political schemers more closely together.

Instead of being a calm, deliberative body, fit to formulate a successful platform, it is as a rule "a tempestuous storm center where opposing factions contend with each other;" where debate is cut off by resolution; where "trading," "logrolling," and compromising defeat the best wishes of the people; where, without deliberation, the plan of a few self-constituted leaders is foisted upon the convention; where the "dark horse" is sprung by the "machine's" orator as the only solution of a deadlock; where the youth of the Nation instead of learning their first lessons in the great science of government are trained in the ways of professional politicians, are taught the most debasing practices of corrupt politics, have their political morals debauched, and their political ideals prostituted.

No matter how grave and ill-fated these conditions may be; no matter how great the failure of an old nominating institution,—the convention; no matter how difficult the remedy may seem, "strengthen thine heart and be of good cheer." There is no cause for despondency and much reason for hope. There is good ground for faith in the American people, in their past achievements, in their near success, in their wisdom, their intelligence, their ingenuity, their practical turn of mind. Confidence gives them great power and independence.

They will experiment where reason approves, and adopt where experiment confirms. Theirs is the material for good popular government, for they desire good government. We fail to-day, where we deny the people their own. Create institutions which will maintain them in power, and success must follow.

REFERENCES.

BRYCE, JAMES. American Commonwealth. Vol. II. 1889.

CONE, S. W. Dangers of Conventions. Democratic Rev., December, 1855, p. 453.

GODKIN, E. L. Nominating Conventions. Nation, June, 1869; also April 13, 1876, p. 240.

GREEN, G. W. Our Nominating Machines. Atlan. Mo., September, 1883, p. 323.

HOFFMAN, E. F. Reform of Delegate System. Penn Mo., August, 1881, p. 602.

HALSTEAD, MURAT. Our National Nominating Conventions. Cosmopolitan, June, 1892, p. 507.

JOHNSTON, ALEXANDER. Nominating Conventions. Amer. Cycl. of Pol. Sci.

LA FOLLETTE, R. M. Menace of the Machine. Chicago University Record, February 22, 1897; also Michigan University, March 12, 1898.

SULZBERGER, M. Nominations for Public Office. Penn Mo., March, 1881, p. 177.

——— Corrupt Conventions. Outlook, December 8, 1900, p. 398.

——— The American Party Convention. New Princeton, July, 1888.

CHAPTER VI.

PROPOSED AND APPLIED METHODS OF NOMINATION.

It is evident that our nominating system has degenerated. There can be no doubt that the patient is seriously ill. To the rescue there have come and there continue to come self-summoned physicians, as well as surgeons elect. All examine for symptoms and suggest remedies. But the symptoms vary with the localities, and with the party affiliations and political theories of the examiners. As a result the proposed remedies have little more in common than the purpose of producing something better. They may, however, be classified under two general heads: those which profess to cure, and those which aim to kill. Those which propose to retain our present system and correct the evils in it, and those which contemplate its destruction or abolition and the substitution therefor of a new system.

Even if it were within the writer's power it would probably be impracticable to enter upon a discussion of all the different methods and schemes which have been proposed or tried in the endeavor to overcome the evils in our nominating institutions.[1] Only a few of the more important ones will be touched upon, as they will be sufficient to bring out the main elements of the difficulty, and aid in the location and analysis of the causes which lie at its base.

[1] For an extended study of such remedies see "Nominations for Elective Office," Part IV, by Frederick W. Dallinger.

Among the remedies having in view the retention of our present nominating machinery may be mentioned the "subward" scheme, the plan of proportional and minority representation, and the legalization of the caucus. Each of these methods assumes the convention system to be a necessary part of our party organization and seeks to re-establish the people in power by perfecting the machinery through which the representative principle involved is put in operation, without in any way destroying its essential features.

The "sub-ward" scheme [1] seeks to overcome the difficulties which are peculiar to city nominations, and which are largely due to a lack of acquaintance of the masses with the candidates and their consequent ignorance as to the merits and capacity of the men running for office. The ordinary ward is to be divided into a number of small precincts, each to send delegates to a ward convention, which would in turn send delegates to a county convention. This scheme is based upon the principle that the relative acquaintance of the people within a certain geographical unit, increases as the unit decreases in size. In other words, our acquaintances are most numerous around our homes. The closer the circle approaches our firesides the larger is the proportion of the population within it which we know. It also involves the principle of representation, or delegated authority. What was already a double election is to be made a triple election. The advantage of this arrangement was supposed to be that through this filtering of popular suffrage, popular feeling would be considerably restricted, while it was expected that the elec-

[1] Forum, January, 1887.

tors would be a select body, of higher intelligence than the masses, and hence better qualified to choose the public servants. However these apparent advantages of the scheme were entirely disproven by practical operation. It is enough for the present purpose to say that the system was long in use in the city of Philadelphia, and there proved a complete failure.[1] In that city each ward was divided into twenty "election divisions," each division sending one delegate to a "ward convention," and each "ward convention" electing three delegates to a county convention.

The proportional and minority representation schemes, which are being so enthusiastically urged by small bands of supporters, can only indirectly be classed under the nomination reform schemes. They, however, join very readily in the cry for better representation in our nominating institutions.[2] It is true, we want better representation, but this we cannot get by merely extending the *right* thereto to minorities. The trouble is that those of us who belong to the *majority,* and who possess the right of representation, are often denied its exercise under the present system. What we need is a change that will revive the power of a dormant right. When this has been accomplished, and minority or proportional representation should be found expedient and wise, the "right to representation" which will then once more possess content, meaning, and power, may also be extended to minorities. Before that day comes, minor-

[1] Forum, January, 1887, p. 496.

[2] Some writers hope for decided improvements over present conditions of nomination by introducing proportional representation within the party, and thus giving "equal effect to each vote cast at a primary." See Remsen, Primary Elections, p. 29.

ity representation is a farce,—an empty badge of democracy.[1] Let us first place in power the brother of the majority with the firm assurance that he will not forget his brother of the minority. The primary question involved, therefore, is not that of a right, for that is granted, but of a proper method for the exercise of that right. We have, but we cannot enjoy.

As to the schemes of minority representation themselves, it may be said that some of them may be read, reread, and lingeringly dwelt upon without in any alarming way endangering one's ignorance as to their nature. Many are so complex and so laboriously studied that it is safe to say most voters, under any such system, would pass to their graves without having mastered even its first details, while among the professional politicians there would arise a class of experts who, with a full knowledge of party strength and of possible combinations, would bring about some startling results in the way of minority representations. Success cannot attend such schemes, for complexity and indirectness are the difficulties of our present system.[2] Before any such plan can be safely inaugurated, it is necessary to rescue politics from political combinations and "machine" rule, which thrive upon our present nominating institutions.[3]

Much is hoped from the legalization of the caucus. This institution is declared by many to be the source of all evil, because of its extra-legal position. Hence it is

[1] Where "machine" politics obtains we certainly have minority representation of a decidedly pronounced form.

[2] Some comparatively simple schemes which do great credit to their originators have also been constructed.

[3] For other schemes, such as the multi-delegate convention plan, and the selection of delegates by lot, see Arena, June, 1897; and for the first, second and third choice system, see Remsen on Primary Elections.

proposed to remedy the difficulties by giving it a setting in law, and so thoroughly surrounding it with legal safeguards as to insure its proper operation. But caucus reform is idle.[1] While thereby some of the "extenuating circumstances" would be removed, the main mark would be missed.[2] In the previous discussion of the caucus and the convention system,[3] it was shown that while the caucus is undoubtedly the source of some of the evils of modern politics, the convention which follows it gives rise to many more, and that what is needed is a simplification of our present system through its reconstruction upon a less intricate and more direct plan. As in complexity and indirectness there is weakness, so in simplicity and directness there is strength.

The legalization of the caucus is often largely a semblance of reform, because many of the "reformers" act under false pretenses.[4] That the so-called "caucus reform" does not seriously endanger the power of political combinations is manifest from the increasing corruption of the caucuses or primaries in spite of the general enactment of caucus laws throughout the country. The main machinery which forms their stronghold remains untouched. Hence to cater to the growing demand for reform they encourage caucus laws, and thus hope to satisfy the popular cry, which unsatisfied might lead to a thorough and complete reform, and thus to their ultimate destruction.[5] "The 'machine,' already in some instances anticipating the danger of the destruction of

[1] Address by R. M. La Follette, Chicago University, 1896.
[2] Eaton in Cyclopedia of Pol. Sci., Vol. 3, p. 348.
[3] See p. 41.
[4] Arena, June, 1897, p. 1014.
[5] Hofer, E., American Primary System, p. 58.

its foundation, under the mask of caucus reform is seeking to satisfy public interest and save all the elements of the caucus essential to 'machine' manipulation and supremacy."[1] It aims to preserve enough of the body to save the soul. It reforms so that it may continue to live.

The reforms which contemplate the abolition of the present system, aim at something simpler and more direct. Because they are important and sweeping, they are often stigmatized as radical and unreasonable. Many of them have been tried with varying success under widely different conditions. Several of them, the "Clark system," the scheme of the "open book," and the direct primary, will be reviewed.

The Clark system is novel and untried, and unlike any other. It has been for a number of years enthusiastically urged by Dr. C. C. P. Clark of Oswego, New York.[2] It applies to municipal elections only. Registration books are to be kept open for one week beginning with the first Monday of September. The names of all registered voters in each election district are printed upon separate and similar cards, and placed in "panels," indiscriminately mingled together. They are then drawn out one by one by the city clerk. The first seventy names thus drawn form an arbitrary group called a "primary election constituency." The next seventy names compose a similar group, etc. In this way all the voters of an election district are divided into artificial constituencies. Each voter is then given notice through the

[1] Address, R. M. La Follette, Chicago University, 1896.

[2] For a thorough exposition of the plan and for an elaborate discussion of its advantages, see "The Machine Abolished," which came from the originator's pen in 1900.

mails as to the time and place of meeting of his constituency for the purpose of choosing an "electoral delegate." All the electoral delegates within one election district form what is called a "district college of electors." These electors must meet and organize within one week after their election, and are empowered by vote of a majority of all members to appoint "in their own time and manner" the aldermen and all other elective officers chosen in the wards. Similarly all the electoral delegates chosen in the city form a "city college of electors" with the power "to choose and appoint the mayor and such other officers of the city at large, as are or may be by law elective," and to fix the salaries of all elective officers. Any college of electors may be called together at any time to fill a vacancy among the municipal officers subject to it, or to remove any officer and appoint another. New electoral delegates are to be chosen every three years.

It will be seen that this plan does away with our permanent primary constituencies, or caucuses, and replaces them by arbitrary groups small enough to deliberate together. It abolishes all city elections, destroys all party organizations, and substitutes a different type of convention. Since no voter can forsee to what particular group he will belong, previous understandings and organizations under "machine control" are entirely forestalled. The delegates are chosen in calm, secluded bodies, and exercise their powers as they see fit. Every office holder retains his position at will of the power which appoints him. There is nothing upon the face of this plan which stamps it with absolute failure. It is of such a nature that its trial would probably not in any

way be fraught with serious disaster. However the tremendous powers which are lodged in the electoral colleges would expose those bodies to the worst influences of corrupt politics. Government would be made largely the select occupation of a few, removed from the thought and interest of the masses, and brought to their attention only in an unimportant form once in every three years.

The "open book method" contains the germs of the direct vote system, and was tried at about the same time that direct primaries were first tried in Crawford county, Pennsylvania. The New York Nation[1] speaks as follows concerning this plan: "As early as 1868 a new plan for getting rid of caucus nominations was tried by the Republican party. Among the Democrats nominations by caucus had worked reasonably well, because the intelligence and morality of the rank and file of the party was somewhat low, and the thinking as well as the management being done mainly by leaders, there was little difficulty in maintaining strict discipline. But the Republican party was the party of great moral ideas whose members would reason about things. The caucuses had become strongholds of corruption and intrigue, and were but sparsely attended. In this predicament the plan of keeping open books in which any Republican could at his leisure inscribe his own name, and the name of the candidate of his choice was adopted, and turned out fairly successful." Another writer says: "The method proposed has been to keep open books in which a member of a party, at his leisure, could inscribe his own name and the name of the candidate of his choice.

[1] July 2, 1868.

It was put in operation in Philadelphia for the Republican party. The result was disappointing; there was always a prior caucus." [1]

This method possessed some of the essential characteristics of the direct vote plan. It did away with all caucuses and conventions and enabled every voter to cast his ballot directly for his choice without the intervention of a delegate through whom his voice might be entirely lost. The main difficulty with the system was its extreme informality, and the absence of all important regulations as to its conduct, whereby too much leeway was given to the leading spirits in the party.

The direct primary which occupies the foreground in the present study will be discussed at length in Parts II and III. It abolishes all caucuses and conventions, and makes every voter directly responsible for the way in which he casts his nominating vote. The wisdom of adopting such a system at once raises the question of the advantages and disadvantages of direct and indirect nominations. Some of the advantages of the latter have already been briefly suggested.[2] It is well to fix in mind the essential conditions under which they may be realized. If the impulsiveness of popular feeling is to be restrained, and if a more careful and enlightened choice is to be made by the delegate than would be possible by the voter, the delegate must go to the convention uninstructed. He must be absolutely free to exercise his judgment as he sees fit. If he is not free, if he is bound by instructions to vote in a particular way, then the main advantages of indirect over direct nominations fall

[1] R. H. Dana, Forum, January, 1887. [2] See p. 67.

away. The delegate is then nothing but a "living ballot" expressing the wishes of the voter, certain and sure,[1] in the convention, just as the direct primary ballot does so in black on white.[2] Both the paper and the "human ballots" are in such cases but mechanisms through which the voter directly and fixedly exercises his right of suffrage, the only difference being that while in case of the direct primary the effect of his vote is known when the primary election returns are made, in case of the convention of instructed delegates the public cannot know of the outcome until after their meeting. In such cases there can be no more enlightened choice, and but little restraint of popular feeling, inasmuch as the decision of the instructed delegate is presumably the decision of the voter. The chances of a violation of instructions cannot be considered as an argument against this point, although it strikes a vital blow at the wisdom and expediency of modern instructed delegate conventions.

It follows that if the delegate is to go uninstructed the voter must not let politics get into his choice, but must determine his ballot by a private estimate of the capacity and intelligence of the man. The supposition must be that he will not occupy his thoughts with political opinions and measures, or political men, but will be guided by his personal respect for some private individual to whom he will give a general power of attorney to act for him. His object must be to choose a good chooser,—one who can and will grapple successfully and in deference

[1] Obedience to instructions is assumed, though, as will be shown later, they are in many cases violated, and hence defeat their own purpose.

[2] Report of National Conference on Practical Primary Election Reform, p. 106. 1898.

to the voter's wishes, with the questions of nomination which may come up for consideration.

Such an exercise of the suffrage would fail to encourage public spirit, to stimulate public interest, and to arouse true patriotism. It would remove politics in its most salient forms beyond the sphere of the large body of voters, and would make it the most select occupation of the few. For a voter to take any interest whatever in merely naming the worthiest person to elect another according to his judgment, implies a zeal for what is right in the abstract, an habitual principle of duty for the sake of duty, which is possible only to persons of a rather high grade of cultivation, who by the very possession of it show that they may be, and deserve to be, trusted with political power in a more direct shape.[1]

In conclusion we may therefore say that if the main advantages claimed for indirect nomination are to be realized, the delegate must act unhampered by instructions.[2] There arises however as an objection to this the fact that a healthy interest in public affairs would be dampened or destroyed. If on the other hand delegates are instructed, the difficulty just mentioned would be overcome, but most of the advantages of the indirect plan would be lost. Besides this, the "indirect" nomination through instructed delegates, which, as has already been shown, when honestly conducted, is practically direct nomination, possesses numerous disadvantages over the simpler plan of direct nomination by a primary vote. Not only does the former system maintain in operation a huge and intricate convention system, involving a

[1] Mill, J. S., Representative Government. 1890.

[2] It is a well-known fact that the instructing of delegates is common at the present time.

great expenditure of money, and a heavy loss of time and energy, but in addition to this it is not as safe a plan. There will always exist the possibilities of a violation of instructions through wilful disobedience, or through bribery or corruption, which would in every case defeat the operation of the scheme. How great these possibilities are has already been indicated in the discussion of the convention system.[1]

From the point of view of the voter's intelligence the direct nomination plan also presents a very favorable aspect. The voter who can cast an intelligent ballot for each of many classes of delegates and vote for men who may safely be trusted with the free choice of candidates unhampered by instructions, possesses sufficient intelligence to exercise that choice directly. Not that he might not make mistakes, but that these would not be as serious in their final consequences, and would not misrepresent his actual intentions and wishes to as great a degree as would the delegates whom he might select, or rather who would be selected for him through "machine" influence, and who would be subjected to the many corrupting powers which modern politics provide.

What we need, therefore, is a system of nomination which will re-establish the people in power and enable them, not to govern, but rather to choose those who shall govern for them. Such an arrangement would not place our institutions and our government at the mercy of the "unruly and ignorant masses," but it would remove them beyond the control of selfish, unscrupulous, and despotic political combinations, and put them into

[1] See pp. 58–62.

the hands of an energetic people, highly interested in their own welfare, generally sympathetic with the deeper principles of humanity, and hopeful in the promises of a bright future,—for such we Americans are.

In this country, where the average intelligence of the population is high, the general judgment of the masses as expressed at the polls, always strikes somewhere near to the truth, and is a result of considerable reliance. It is true we have a limited number of ignorant voters who must be taken into account, and whose opinion clouds and vitiates the best judgment of some of the more enlightened at the polls. This is a very unfortunate condition, but it is an equally natural one. In a republic like ours, the lower classes can no more be eliminated than they can be ignored. They must be listened to, and reckoned with. Certainly they are as well qualified to vote at a primary as at a general election. They possess sufficient consciousness of their individual importance and rights to resent disfranchisement with a rebellious spirit, which might lead to serious complications in government and threaten the peace of the country. While the restriction of political rights to the more educated classes might be highly desirable, it would be inconsistent with our democratic spirit, and would subvert the basic principles of government, by establishing an educational aristocracy, limited in numbers, and free to follow the interests and prejudices of its own class, with the attending danger of degenerating into a plutocracy through lust of power and wealth.

This it must be admitted is largely speculation, for we shall undoubtedly continue to move on as we have in the past, not as a class, but as a people,—a people

who are not all wise, nor all ignorant, but who are more wise than ignorant, and who will ever seek to mould their institutions so as to minimize the evils of ignorance, and to strengthen the cause of wisdom, by respecting the rights of every man and giving him a voice and a hearing as long as his ideas do not threaten the public welfare, though ultimately he may be overruled. In this way the best results of republican principles are attained. All are heard, but the greater numbers rule. All are free to express their opinions, all are satisfied, but the result is a fusion, a combination, which represents the best that we as a people can do. We all err,—the wise man as well as the fool, the radical as well as the conservative, but we do not all err in the same direction. The wise man's weakness may be the fool's strength. The impetuous temper of the radical is restrained by the slow, keeping qualities of the conservative, while the plodding, impeding spirit of the conservative receives a healthy stimulus from the uncurbed, progressive leaps of the radical. Each is a helpmate to the other.

If, then, we can create and maintain institutions which will secure the happy blending of ignorance and wisdom, the predominance of the latter will insure to us the best results possible at the present stage of democracy. And if we can evolve nominating institutions which will give each of us a positive vote, conditions will have been considerably improved, for while government by the best of us is better than government by the rest of us, the rest of us cannot be ignored; and government by all of us who are interested in our own affairs, is better than government by a few of us who

have combined in power for glory and private gain, and who overlook the public welfare in a selfish search after personal ambitions. In brief, it is better to have the people in power than to have the "machine" in power.

REFERENCES.

BROWN, J. W. Representative Government. 1899.
BUCKALEW, CHARLES R. Proportional Representation. 1872.
CLARK, C. C. P. The Machine Abolished. 1900.
COMMONS, JOHN R. Proportional Representation. 1896.
CREE, NATHAN. Direct Legislation, ch. XXIV. 1892.
DALLINGER, FREDERICK W. Nominations for Elective Office. 1897.
FIELD, ——. Representation of Minorities.
FIELD, DAVID DUDLEY. Some Reprehensible Practices of American Government. New York, 1896.
HARE, THOMAS. Minority Representation in Europe. 1870.
LA FOLLETTE, ROBERT M. Menace of the Machine. Chicago University Record, February 22, 1897; also address before Michigan University, March 12, 1898.
MILLS, JOHN S. Consideration on Representative Government. 1890.
REMSEN, DANIEL. Primary Elections. 1894.
STERNE, SIMON. Personal Representation. 1867.
STERNE, SIMON. Representative Government. 1869.
TYSON, ROBERT. Representative Government. 1898.
——— Legal Disfranchisement. Atlan. Mo., April, 1892, p. 542.
——— Slaying of the Gerrymander. Atlan. Mo., May, 1892, p. 678.
——— Substitutes for the Caucus. Forum, January, 1887, p. 491.
——— Substitutes for the Caucus. New Englander, October, 1875, p. 734.
——— The Open Book Method. Nation, July 2, 1868, p. 4.
——— Legalization of Caucuses. Nation, February, 1869, p. 86.

PART II

DIRECT PRIMARY LEGISLATION IN THE UNITED STATES

CHAPTER I.

THE MOVEMENT FOR BETTER PRIMARIES.

The development of the caucus and convention system, from an institution purely democratic and representative in character, to one largely undemocratic, corrupt, and "machine-ridden," has already been sketched. This change, it has been indicated, came about through the inability of our political system to withstand the many powerful and corrupting forces which the tremendous development of our industries, and the concentration of wealth and population brought into play. The struggle for power which accompanied this development was carried into every field of activity, and nowhere was success greater than in the field of politics, where the "boss" and "machine" even in the earlier days of the Republic established their strongholds.

Opposition to this tendency toward one-man-power in politics naturally developed immediately, and numerous attempts were made to stay its progress. Some of these, which have already been discussed, were found to have been more or less failures; but there remains one which in scope and character far outstrips all others, and which bids well to successfully solve the problem. This is the reform of the primary through the institution of a system of direct vote which in its complete form entirely abolishes all caucuses and conventions, and replaces them by primary elections held upon the same

basis as general elections, and enabling each voter to directly express his choice for any candidate, delegate, or party committeeman, by means of a primary election ballot around which all the safeguards of the Australian ballot system have been thrown.

This movement for better primaries had its origin almost half a century ago, and in 1866 found its first legislative expression through the enactment of a very imperfect statute in California which regulated the method of selecting delegates, and threw a few safeguards around primary meetings. In 1868 the Crawford county system was inaugurated in Pennsylvania, and in 1871, and 1872, the Pennsylvania legislature passed local acts regulating the direct primaries in a most imperfect manner. From then on, primary legislation of all sorts has been continually on the increase, a special stimulus having been received through the inauguration of the Australian ballot system.

The primary reform is closely related to the Australian ballot reform, both being part of the general reform of our election machinery, for the election of an officer may be looked upon as beginning with his nomination in the party caucus, or with the selection of delegates to a nominating convention. Both reforms aim at an improvement of these two steps in the process of election, and while the movement for better primaries was of earlier origin than that for a better ballot, the latter was the first to be successfully completed. It was accomplished in about one decade, from 1882 to 1892, and resulted in the purification of the general elections through their legalization, and their removal from party control, by placing them within the pale of the law,

thereby making them public institutions, through which every voter was enabled to cast a secret and independent ballot for the candidate who had been nominated. Like the impulse that gave us a better ballot, the primary reform movement is spontaneous and widespread; there is the same rising of the body electorate, which several decades before had cried for better elections; there is the same progressive movement for something better, and the same willingness on the part of progressive legislators to give statutory expression to the popular demand.

On the other hand, there are important differences, which not only make the primary reform more uncertain, but more difficult. The primary problem is without extended solution in any part of the world. More than that, it is distinctively a question of American politics. Nowhere beyond this country can the finger of experience be placed to indicate a sure way out of all the difficulties that surround our modern primaries. In case of the election reform, which required a system based on formal registration, and which guaranteed a secret ballot and an honest count, it was but necessary to copy the statutes of Australian legislators. There, in the land of the kangaroo, the problem had already been solved, and experience could point with certainty to success wherever the system might be adopted.

Moreover, before our ballot laws went into effect, the system of electing officers was practically uniform throughout the land, and a uniform remedy could be applied, while our caucus systems, the notices required, the officers chosen, the manner of choosing, the test of party affiliations, the qualifications for participation, vary not

merely from State to State, but from city to city, and sometimes even from village to village.[1] Each State has its own peculiar convention system, which resembles that of its neighbor only along general principles. Registration laws and constitutional provisions vary widely. In Pennsylvania there is no registration whatever; in Massachusetts voters register but once every ten years; while in many States annual registration is required. Hence a national law is out of the question, while state laws must be modeled to the political institutions and conditions of the particular States in which they are to operate.

The politician is more vitally affected by the primary reform than he was by the ballot reform. While the latter deprived him of a prosperous field of work, it left open the largely unworked, and important field of nomination. Previously his efforts had been largely directed toward the election, because it offered a most convenient and immediate means of achieving his purposes. Hence while he resisted the Australian ballot reform, the caucus and the convention still remained open to a successful occupation. But now the primary reform is to oust him from his last stronghold. Beyond its bounds his future looks dark. To deprive him of the caucus and convention system, means to deprive him of his most fertile field of operation. Hence, while he deceivingly professes a most lamentable ignorance "of those endless, new-fangled devices for the destruction of individual liberty," called direct primary laws, he is fully aware of their import, and diligently strews the way of the reformer with stumbling blocks, based upon false appeals

[1] Remsen, Primary Elections, p. 39; also p. 48.

of liberty, and raised under the mask of public opinion and popular sentiment.

From what has been said, it will probably be clear why there is diversity in the direct primary laws proposed or enacted in the different States. The absence of a single positive remedy leaves room for wide speculation; the impossibility of national regulation of nominating systems for purely state offices, leaves the subject exclusively to the States, hence each State must enact its own primary laws; the methods of "machine" opposition are endless, and call for all kinds of compromises; the caucus and convention systems are not alike; party customs differ widely; the constitutional requirements respecting "elections authorized by law" are peculiar to each State; registration laws are dissimilar; and sectional ideas of proper laws, divergent. For all these reasons the primary election laws, which have come up for consideration, have differed widely even in some essential features. To say that one or the other of these laws must necessarily be a failure simply because it happens to differ from its neighbor, is to utterly ignore the practical requirements of the political situation in the different States.

We may now turn to some specific evidence of the growth of primary reform,—to that most excellent and permanent time-keeper of progress, the statute book. After the successful inauguration of the Australian ballot system, it was found that the evils in our election machinery had been but partially remedied. While the voter was free to cast his ballot as he chose at the general election, it was still possible, and often happened, that the man for whom he had to vote was placed upon the

ticket in spite of his unpopularity by a "machine-controlled" caucus or convention. This is very generally the case at the present time, and as long as our defective nominating machinery continues, we can unfortunately but partially enjoy the advantages which the Australian ballot system would otherwise insure. The ballot reform needs the primary reform to complete it. The vital question is, what sort of a reform shall it be? Attempts have been made in many directions. Reform caucus laws have been enacted in great numbers throughout the country. In character they have differed widely. In operation they have been chiefly failures, for in spite of these laws our caucuses and our primaries have grown more corrupt and our conventions more "machine-ridden."

The main reasons for this condition of affairs, have already been discussed under the head of "political combinations." It was seen that the power of "machines" and "bosses" is rapidly increasing throughout the country, wherever wealth and population are concentrated, even extending its baneful influences into the rural districts. Disgust with "machine-controlled" government has increased the stay-at-home vote to discouraging proportions.[1] In addition to this, through the institution of the Australian ballot system the tremendous corrupting forces which had been concentrated at the general elections, were forced to find other fields, and naturally were transferred to our nominating machinery, where they found fruitful soil in the extra-legal caucus and the party nominating convention. There was nothing to oppose them here, and so they boldly en-

[1] See p. 43.

tered that sacred citadel of rights, in which were enshrined the caucus and the convention,—those party institutions, which opponents of reform claimed the hand of law might not touch without infringing upon the proper liberties of the political parties.

What more could the "machine" wish for its protection than the cover of this false notion of the political liberty of parties? Should a legislature perchance be bold enough to attempt the passage of a good primary law, which would take the politician off his feet, all that he needs to do is to set every "ward-heeler" and corrupt demagogue to wringing his hands and to crying out to deluded crowds of party men that their liberties are being destroyed; that the party of their affiliation is on the verge of being shackled by a despotic, reform legislature; that the time is there to act and to oppose. Such ruses, experience has shown, have frequently met with temporary success. Even to-day we find that false notion of liberty befuddling the minds of many men who oppose the movement for better primaries, and the enactment of comprehensive and complete primary laws which give our political parties a thorough legal setting, as an encroachment upon the liberties of the parties, and upon the rights of their members.

Under cover of such ideas corruption prospered in the convention, as well as in the primary. Where primary laws were passed, they frequently merely legalized the action of the primary, and thus clothed the rules and regulations of the party which controlled such action, with the power of law. Whether under such conditions the primary was improved, depended upon the rules prescribed for its conduct; whether the rules were good

or bad, depended upon the authority which made them. Wherever party organization was in the hands of political combinations, and "bosses," and this was, and is, the case in most of our cities, and, indeed, in many rural districts, the rules were bad[1] and aimed at the protection of the corrupted power which made them. Legislation of this more or less imperfect character was put upon the statute books of California, New York, New Jersey, Ohio, and Pennsylvania before 1880. Only the local acts of Pennsylvania of 1871 and 1872, concerned themselves with direct primaries. Not until 1880 was there further legislation upon this subject. In that year a new landmark was set in direct primary legislation through the enactment of an optional law, applying to the counties of Harrison, Bourbon, Campbell, and Kenton of Kentucky.

From 1880 to 1890 optional direct primary laws were enacted in Nevada, South Carolina, Georgia, and Nebraska, while a compulsory system, the first of its kind, was inaugurated in Missouri, in the city of St. Louis, for the nomination of all officers, and the election of delegates within the city to conventions representing areas beyond its limits. During the early part of this decade a unique party system of direct primaries, known as the Kansas representative vote system of direct nomination, was established in Jackson county, Kansas. In addition to this, primary election laws aiming to regulate caucuses and conventions were also passed in Connecticut, North Dakota, Ohio, Colorado, Delaware, Georgia, Maine, Michigan, Minnesota, New York, Mas-

[1] Tammany organization of New York is the most notorious illustration of this kind.

sachusetts, South Carolina, Illinois, and Indiana. The primaries, however, continued to grow worse, and more thorough steps were urged. Two main remedies were suggested: the application of the Australian ballot system of voting to the selection of delegates to conventions, and in the nomination of local officers; and the plan which had already been tried in the South, in Pennsylvania, Kentucky, Ohio, Indiana, Kansas, and elsewhere, which required the abolition of all conventions through the institution of a system of direct nomination, whereby every voter directly cast his ballot for the candidate of his choice for each and every office that was to be filled.

Between 1890 and 1895, the former plan of improving the method of selecting delegates through remedial legislation was inaugurated in optional but imperfect form in Washington, and compulsory in California, Massachusetts, and Oregon. The California act, passed in 1895, was quite thorough and applied to counties of the first and second class. The Massachusetts caucus law of 1894 was compulsory and applied to the entire State, with certain special compulsory features applying to Boston and optional for the rest of the State. It was amended in 1895 and again in 1896. In Kentucky the other plan,—that of the direct vote, which had been established in that State in 1880, was further developed through the passage of the optional direct primary law of 1892, which laid the foundation for the present well-known system of optional direct primaries. The compulsory direct primary laws of Missouri of 1889 and 1891, were amended in 1893 by making cities of one hundred thousand, instead of three hundred thousand

inhabitants, subject to the act. Optional direct primary laws were also passed, or amended, before 1896 in Virginia, Georgia, Mississippi, and Arkansas. During this period, and from then on, a large and rapidly increasing mass of legislation, dealing with the indirect primary or caucus assemblages, was enacted in many of the States of the Union with uncertain and oftentimes discouraging results. Since the present inquiry does not propose to concern itself with legislation of this nature, it may be passed by with a mere mention of its existence.

In 1896, Virginia and South Carolina amended their optional direct primary laws, while the Republican party instituted a complete party-regulated direct vote system in the city of Lincoln, Nebraska. In 1897 an optional direct primary law was put upon the statute books of Florida, and an amendment passed to the compulsory law of Missouri requiring a declaration of party affiliation in all cities of three hundred thousand inhabitants and over. In California, a new compulsory law applying to the entire State for the selection of delegates to conventions, was enacted in the hope of escaping the unconstitutional features of the previous law of 1895. In 1898, compulsory laws applying the Australian ballot method to the selection of delegates to conventions, were passed in New York and Illinois. In Ohio, where party direct primaries had been in use for many years in a limited way, an incomplete law was also passed to correct some of the most flagrant abuses which had developed as a result of the extra-legal position of the direct vote system.

In 1899, both the New York and Illinois laws were superseded by new laws, which are still in force. The

Illinois law is compulsory for the selecting of delegates in counties having a population of one hundred twenty-five thousand or over, while the New York law, which is also compulsory, not only for the selection of delegates, but also for the nomination of officers, empowers the general committee of the party in cities of five thousand inhabitants and over, to decide just what convention shall be held, and what officers shall be nominated by direct vote. As the party rulers are generally opposed to direct primaries, this is a scheme of legislation which, while it bears the sign of promise upon its face, is really a mask of reform,—a subterfuge for escape from popular control. Besides these two laws, optional direct primary laws were also enacted in Utah, Alabama, and Nebraska, while the California legislature made another attempt to meet the decision of the supreme court of that State, by passing a compulsory law applying to the entire State, abolishing the test of a *bona fide* present intention of supporting the party's nominees at the next election, and putting in its place the "open primary" system. The year 1900 was comparatively unimportant as far as direct primary legislation is concerned. However, Louisiana enacted its first law, which is optional, and New York amended its enrollment system used at the primary, while South Carolina substituted party registration for general registration as a qualification for participation in the primaries.

We now come to the year just passed, 1901, which stands unprecedented in the general and thorough agitation for direct primaries; in the favorable acceptance of the reform; in the number of carefully drawn bills urged upon the legislatures of all the leading States; and in

the number, scope, and degree of completeness of the laws that were enacted. When compared with that of the preceding years, the progress of the reform movement is almost phenomenal. Bills providing for the nomination of all officers of the State by direct vote, were introduced in some nineteen of the leading States, including Wisconsin, Minnesota, Michigan, Indiana, Illinois, North Dakota, South Dakota, Washington, California, Oregon, Montana, Kansas, Missouri, Colorado, New York, New Hampshire, New Jersey, Maryland, and Pennsylvania, while in Ohio, Tennessee, and Utah, there was considerable interest aroused, and bills were framed ready to be submitted to the legislatures. This will probably be done at their next sessions. These States comprise by far the most important part of this Union. They lead in every branch of life. They represent the best of education, and of progressive thought. Their wealth, power, and influence dominate the policies of the Nation, and determine the administration of its greatest Commonwealths. The direct primary movement is hence identified with what is strong, progressive, and foremost in this country.

The uniformly wide scope of the bills which were introduced is quite remarkable. Almost without exception they provided for systems of direct primaries far in advance of any yet put in operation. They were generally, as introduced, compulsory throughout the entire State for the nomination of all officers, local, county, and state. All conventions were hence to be abolished. Most of the bills provided for concurrent primaries in which party registration, or upon challenge, some formal test of party affiliation, was required for participation

The Australian ballot system of voting was incorporated in most of the bills, as far as consistent with the other requirements, and all general election laws that were applicable, were extended to the primaries.

The bills invariably encountered strong opposition from the ranks of those who had been identified with professional politics. The methods resorted to ranged all the way from honest attempts at persuasion and argument to the vilest abuses of money and morals. "No stone was left unturned." Where public clamor demanded some law, "machine" legislators came forward with improvised bills of their own, looking quite as effective as the original bills, but having hidden under their innocent phrasing a sufficient number of loopholes to permit the "bosses" to manipulate their "wires" quite as successfully as before. A good illustration of the operation of such a law is found in that of Illinois "under which there has never been a conviction, and even only one indictment which held water. It was framed by politicians to quiet public clamor."[1] The recent unsuccessful struggle in Wisconsin, in which the "machine" was confronted by "no compromise" and "unconditional surrender," is a striking instance of the desperate character of the conflicts which were engaged in. Taken all in all, the Stevens bill of Wisconsin was, in the opinion of the writer, the best of its kind yet presented to a legislature. It was, however, defeated by a combination of the regular corporation lobby, the Federal officeholders from all parts of the State, and probably the largest assemblage of political "strikers" which ever assembled at the capital.

[1] Insley, Edward, Arena, June, 1897, p. 1023.

But by no means all the bills suffered defeat as did the Stevens bill of Wisconsin. In Minnesota, Oregon, California, Indiana, and Michigan, reform was advanced, although not without compromise. The Minnesota law stands as the best incorporation of the principle of direct primaries yet accomplished and put in practical operation. It is compulsory, and applies to the entire State for the nomination of all, except state officers. The Oregon law, which has recently been declared unconstitutional, although of narrower scope, ranked a close second, because of greater perfection than the Minnesota law in certain important features, such as the provisions for the maintenance of proper party organization, and for the promulgation of local platforms. It was compulsory for the nomination of all officers within the county, resembling in this respect the Hennepin county law of Minnesota. A second compulsory law applying to all cities having a population of ten thousand inhabitants and over, for the selection of delegates to conventions, was also passed in Oregon on the day preceding the passage of the law already mentioned.

The California law, passed during the last session of the legislature, is also compulsory, and applies to all cities, and cities and counties, of the State which have a population of seven thousand five hundred inhabitants and over, for the selection of delegates to conventions and for the nomination of local officers. The Indiana law is likewise mandatory, and as passed applies to the Republican and the Democratic parties in Marion and Vanderburgh counties for the conduct of all their primaries and conventions. It presents a new feature in that it provides for a special primary for the election of

precinct committee men, who must within ten days after their election decide whether the party candidates are to be nominated by direct vote, or by delegate convention. Hence, while the law is mandatory in form, it makes the adoption of the direct vote system optional. In Michigan a "machine-controlled" senate defeated all the comprehensive bills passed by the assembly, but finally permitted the present law to pass. It is mandatory for the nomination of all officers within the city of Grand Rapids.

These laws are the positive results of reform, but they by no means properly represent the strength of the movement in the different States. This is more closely approximated by the comprehensive bills which were introduced in nineteen of the foremost States of the Union. Throughout the country, clubs and leagues have been formed in the interests of direct primaries. All the great national and municipal reform organizations working for the cause of better government, have enthusiastically identified themselves with this progressive movement, while many of the greatest thinkers in the field of politics, and many of the most capable men in the public service, have approved of, and are actively promoting the reform.[1]

Illustrative of the widespread and rapidly growing sentiment in favor of primary reform, was the confer-

[1] Among these men there is probably none more deserving of special distinction than Gov. R. M. La Follette of Wisconsin, who was one of the earliest apostles of the movement. For consistent denunciation of "machine" politics, for deep and serious study of the direct vote system as a remedy, for enthusiastic and swaying appeals to the people in behalf of nominations through their direct choice, for a persistent exposition of the specific scheme of his hopes, for fidelity to the reform, and for faith in its ultimate victory, Governor La Follette probably has no equal.

ence on primary elections held in New York in 1898. "The idea of a national conference on primary election reform originated with the Political Committee of the Civic Federation of Chicago.[1] The work of that committee in behalf of municipal reform had taught it, after four years' continuous effort, that if any permanent reform were to be secured, it must be through the purification and utilization of the party primaries." [2] The need of "a national organization[3] to collect information and statistics on this subject for the education of the people and of the lawmakers," was generally felt, and led to the appointment of a committee which issued a call for a meeting in the city of New York, to be held on January 20 and 21, 1898. This call was endorsed all over the country by all classes of people, "including members of the press, governors, congressmen, members of legislatures, members of all three national committees, presidents of labor, municipal reform, church, and commercial organizations." All these classes were represented at the conference, and worked energetically to carry out its purpose,—that of "discussing and discovering as far as possible the precise defects in the various systems which now obtain, and their remedies." The addresses and the ensuing discussions were all of an eminently practical character, and confined themselves closely to the purposes of the conference. The

[1] The inspiration through which this movement originated was probably largely received from an address delivered by Governor La Follette at the University of Chicago, February 22, 1897. This address appears to have been the first noteworthy public utterance upon the subject of direct primaries. It contained clearly-outlined provisions for a comprehensive system of direct nominations, and briefly but pointedly presented all the essential features of a good direct primary law.

[2] R. M. Easley, Secretary of Civic Federation of Chicago.

[3] Edward Insley, in Arena, June, 1897; also John L. Hopkins, in Arena, June, 1898

general interest aroused by this conference, and the fund of information on the status of the primary in this country, which was given to the public, was a great stimulus to thought and action along the line of primary reform in every State.

An unprejudiced consideration of the facts which have been presented in following out the movement for better primaries, will support the view that it is something more than an upstart movement, inaugurated by a few "calamity howlers," who believe that they foresee the end of democratic government in an approaching despotism of one-man-power; who are impatient for something new, and who love notoriety, and newspaper sensationalism. Direct primary reform is neither new, nor radical, nor superficial. Its stream flows deep and wide and issues from the masses of the people who have been roused to action, through the appeals of earnest men,—appeals which rest upon sound principles, which are simple and easily comprehended by the public mind. Direct power is to be substituted for indirect power. The short route to government control is to be followed, instead of the long. The evil is plain; the remedy is simple; hence the populace applauds, supports and acts.

Let us, however, remember that after all, the reform is but just begun. Although much has already been accomplished, much more remains to be done. The fruits of the Australian ballot system are as yet, ours only in part. One of the closest students of this system tells us, that "just so long as we continue to nominate by a caucus, or a convention so long must we fail to elect the best men, for our hands are tied. If a method can be found by which all men can be given political equality

before the law, actually, as well as theoretically, the evil will die a natural death. To compress the issue roughly into a phrase,—what we need now is not merely free elections, but free nominations also,—not merely a sincere and accurate expression of opinion, but *an opportunity to nominate and to vote effectively for any one whom we desire.*" [1]

But while much still remains undone, much may well be expected from the rapidly growing body of primary reformers. Though opposition is as yet strong and desperate, the forces which are accumulating throughout the country issue distinctly from the people, and will continue to broaden the way and give the new reform better trials. It is true, that some of our greatest men, whose opinions we respect, denounce the direct vote system, because, as they claim, it is "new, untried, populistic, and revolutionary," and opens up an untrod, and more or less uncertain path. But may it not be replied, upon the basis of the preceding discussion, that while proper conservatism is to be encouraged, there seems to be a tendency among the best of us to cling to the old sheep-path, and jump the fence at the risk of a broken leg, rather than break a new path through an open gate, however great the convenience of the latter may be.

The "new light" which observing men say is now breaking upon the American people, is certainly not lost upon the field of politics. Theorization is yielding to practical experimentation. The cry is for "facts," "results," not theory and logic. The argument that a law is new or untried is losing in weight. Men ever grow

[1] Wigmore, The Australian Ballot System, p. 84.

more ready to experiment, where reason sustains, and to adopt where experiment confirms. This change of sentiment greatly strengthens the position of the advocates of the direct vote system, and opens the way for a free and impartial test of proposed schemes, which must ultimately lead to a successful solution of the primary problem.[1]

[1] For references, see close of chapter XIII, Part III.

CHAPTER II.

PRIMARY LEGISLATION IN THE NORTH ATLANTIC STATES.

Massachusetts.

The direct vote system of nomination has been tried in Boston for the choice of candidates for membership in the common council, the board of aldermen, and in the lower house of the legislature. Chelsea, a neighboring city, has also adopted it for certain officials. In the nomination of the mayor, a half way direct vote system has been in operation, in that delegates are pledged beforehand, and every voter knows just for whom he votes,[1] through the medium of the pledged delegate. A strong sentiment has been aroused in the State for an extension of the plan. In 1896 a bill was introduced applying the direct vote principle to the election of the board of aldermen. It was defeated in spite of the fact that "direct voting met with universal favor." The next year, several bills had this provision attached, but none passed because of the opposition of politicians. In 1898 a more comprehensive scheme of direct primaries was presented to the legislature. These persistent efforts at reform finally prevailed for the nomination of certain officers in Boston, as already indicated. The success of the reform in this city speaks well for a further development of direct nominations in Massachusetts.

[1] See p. 75.

The first caucus act of Massachusetts was passed contemporaneously with the Australian ballot act, in 1888.[1] The insistence of the political parties upon their right to manage their own affairs resulted in the limitation of the act to a few, simple provisions. It was in force throughout the entire State until the passage of the act of 1894, and now applies only to minor parties casting less than three per cent. of the votes last cast for governor. The act of 1894,[2] which will be briefly reviewed, was amended in 1895 [3] in the light of one year's experience, and again in 1896. During this year a special act, applying only to caucuses in Boston, was also passed. This legislation has placed Massachusetts in the lead of the New England States in caucus reform.

As elsewhere, it was successful experimentation that led to the reform in Massachusetts. In 1889 a Republican ward of Boston tried the scheme of a secret Australian ballot containing the names of those candidates, who had been presented through properly filed nomination papers, signed by at least ten voters of the party. It was successful, and early in 1890, the Republican city committee extended it to the entire city. The results again were so gratifying that an effort was made on part of the Democratic party to adopt similar rules. The failure of this attempt led to the combined agitation of both parties for caucus reform through legislative enactment with the result that the system, as laid down by the rules of the Republican party, was incorporated in the caucus law of 1894,with certain general

[1] Session Laws of Massachusetts, 1888, p. 516.
[2] Session Laws of Massachusetts, 1894, p. 617.
[3] Session Laws of Massachusetts, 1895, p. 582; also p. 626.

provisions applicable throughout the entire State, and special provisions compulsory only in Boston. This law was amended in 1895 and divided into two separate acts, one embracing the entire State, and the other specially formed for Boston.

The act applying to all political parties in the Commonwealth, contains provisions for the popularization of party organization by requiring all parties annually to elect their proper and necessary party committees at the caucuses held for the nomination of officers. Certain general rules are also laid down for the organization and government of these committees, although large discretionary powers are retained, such as the determination of the membership of the party, which hence authorizes a party enrollment. However no political committee can deprive any voter from taking part in a caucus because he has supported an independent candidate for office, or if he takes an oath, when so required in a caucus, that he is the person he represents himself to be, is a voter in the ward, a member of the party holding the caucus, intends to support the nominees of the caucus at the next election, and has not taken part in any caucus of any other party within a year. The state central committee fixes dates for caucuses relating to state elections, which must be on one of two specified dates, except those for the nomination of representatives to the general court, which may be seven days later, as the city or town committees may determine. No two parties can hold their caucuses on the same day. The party first filing with the secretary of the state has precedence in the selection of caucus days. Ballots and voting places are furnished at the expense

of the city or town. Voting lists must be used as check lists. Ballots must be counted in full view of the voters. Plurality elects.

The following provisions do not apply to Boston. Notices of the call must be issued seven days before the caucus; must state the place, day, and hour of holding, which shall not be later than eight o'clock in the evening; be posted in five places on lines of public travel, in every post-office, if practicable, and published in one or more local papers, if any such are published; specify how the caucus shall organize; that a ballot for the choice of delegates, candidates, etc., shall be taken, and the polls kept open for at least thirty minutes. As a precaution against fraudulent counting, the "secretary of the caucus" is obliged, upon written request of ten qualified voters, to keep the voting lists and ballots, and must produce them if called for by any court of justice.

Under the act applying to Boston all caucuses relating to a city election must be held on the same day, except those for the choice of a ward committee, or of delegates to a convention for the nomination of a mayor or of aldermen. No two parties can hold caucuses on the same day. Eighteen days' notice of caucuses must be given, and seven days before they are held another notice is issued stating the place, day, and hour of holding them, which hour (named by the ward committee) cannot be earlier than two nor later than seven-thirty in the afternoon. The polls cannot be closed before eight-thirty. Two weeks before the caucuses, polling places must be prepared, and the city committee notified of the places selected. Blank nomination papers are prepared at the expense of the city. No names can

be printed upon the ballots other than those presented on nomination papers. Under the amendment of 1896 the number of signatures required upon the nomination papers was changed from five to ten legal voters of the ward and members of the party. Against the names of delegates to a convention a statement may be added that they are favorable to, support, or oppose certain persons or measures, all to be embraced in not exceeding eight words. These nomination papers are filed with the city committee not less than ten days before the caucus, and are publicly opened and announced. The papers are then examined and seven days before the caucus are filed with the election commissioners, three days being allowed for withdrawals, filling vacancies, etc., for which ample provision is made in the law. Ballots, both sample and official, are prepared at the expense of the city. In form and arrangement they resemble those provided for general elections. Caucus officers consist of a warden, clerk, and five inspectors. They are elected annually in the September caucus and serve in all caucuses held in their respective wards for one year from the first day of October following. Provision is made for voting in additional officers at the caucus. Candidates may have representatives behind the guardrail to supervise the check list and witness the count of the ballots. Caucus officers, regular and special, are sworn and serve without pay. The general proceedings, manner of voting, etc., are the same as at an election. The ballots are preserved, and recounts may be called for. The provisions of this act may be adopted by any other city or town in the State at a meeting called by the petition of fifty voters of the party desiring it. After a

year's trial the act may again be revoked, if found unsatisfactory.

The law is silent upon the matter of enrollment or party registration. In Boston, an entirely new registration is made only once in ten years, and elsewhere in the State there is no provision for it at all.[1] Enrollment under party rules was required for participation in the Republican caucuses, while the Democrats had no enrollment whatever. Grave abuses soon developed, and in 1897 an amendment was passed providing that if a challenged person made oath as to his identity; that he had not taken part in the caucuses of any other party for a year; and that he intended to support the nominees of the caucus, he was to be permitted to vote. "The result has been anything but satisfactory. Enrollment by the party has been dropped entirely under the feeling that if a man is not enrolled, he will be permitted to vote nevertheless by taking the prescribed oath at the caucus. To certain men an oath offers no barrier." [2] It prevented the unjust exclusion of some, but permitted the unfair intrusion of others.

The immediate result of the original law was good, although it applied the direct vote principle only to the choice of ward officers and delegates to conventions. It met with such favor as to lead to the extension of the direct vote plan, as already indicated.[3] The Boston act is, however, not entirely satisfactory. The perversion of delegated authority, while reduced, has not been out-

[1] Report of Conference on Primary Election Reform, New York, 1898, p. 57.

[2] R. L. Gay of Massachusetts, before National Conference on Primary Elections, New York, 1898.

[3] R. L. Gay of Massachusetts, before National Conference on Primary Elections, New York, 1898.

rooted, because of the retention of the convention system of nomination for certain offices. The right to call for a recount of ballots has led to much abuse of the privilege, mere curiosity prompting too many to ask for it. Through the carelessness of caucus officers in checking names in the caucus, the check lists are often unreliable and practically useless in restraining fraudulent voting by members of opposite parties. The caucus officers seem to be inclined to assume large powers and exercise them in an arbitrary and reprehensible manner. A partisan or factional spirit is often manifested, and arrest threatened for trivial causes. The remedy, here, would seem to be to subject the officers to the same control and penalties as general election officers. The holding of the caucuses of different parties on different days has been unsatisfactory. Sentiment is rapidly coming to favor concurrent caucuses for all parties, held on the same day and at the same places. With these opportunities for further improvement, primary reform will undoubtedly be carried forward rapidly in Massachusetts, and judging by the growing favor with which the method of nomination by a direct vote of the people is being received, a more general application of the plan in the near future is very probable.

New York.

In the State of New York caucus and convention reform has been the subject of considerable legislation of recent date. In 1898 a law was passed which was quite complete and detailed.[1] Some of its provisions, how-

[1] Session Laws of New York, 1898, p. 331.

ever, proved unsatisfactory, so that in 1899 a new law was substituted.[1] During the next year the enrollment plan, which had been incorporated in the law of 1899 in amendatory form from the law of 1898, was amended for a second time,[2] and now stands as one of the strongest features of the New York law, and as the best enrollment system yet devised in any State. Since it would be but confusing to enumerate the details of both the laws of 1898 and 1899, and since the former is no longer in force, only the latter will be explained, with the exception of its enrollment provisions, which will be given in their amended form as stated in the amendment of 1900.

The New York law may be divided into four parts, dealing with (1) the enrollment of voters; (2) primary elections proper; (3) party conventions; (4) the selection and conduct of political committees. It is compulsory for all cities and villages having a population of 5,000 or more, and applies to all parties within such cities and villages, which have cast at least three per cent. of the total vote polled for governor at the last election, unless weaker parties elect to come under it before July 1, of any year in which fall primaries are held. Cities and villages which are not controlled by the act, may be brought under its operation through the adoption of a resolution by the general party committee of the county of each party "entitled to be represented by inspectors of election," requesting that the question be submitted to a party vote. This resolution must be filed with the secretary of state and with the county clerk,

[1] Session Laws of New York, 1899, p. 968.
[2] Session Laws of New York, 1900, p. 461.

at least sixty days before a general election. If no resolution is filed, the petition of one-tenth of the voters of the city or village asking that the question be voted upon may be filed in a similar manner. A majority vote is required for its adoption. If later it is desired to reject the act, a similar procedure must be gone through.

The adoption of the law does not necessarily mean that candidates are to be nominated by direct vote instead of by convention. This question is to be decided by the general committee of a party by majority vote, through the adoption of a rule at least thirty days before primary day that the nomination of that party's candidates for specified public offices shall be by direct vote. And so long as those opposed to direct primaries control the general or central committee, it is safe to predict that no direct primaries will be permitted.

The exact scope of the law is somewhat confusing, but may be briefly restated as follows: It is compulsory in certain cities and villages containing at least 5,000 inhabitants by *legislative enactment,* and in others by *choice.* Wherever compulsory, it is controlling in the election of delegates, alternates, and party committeemen, and for the nomination of officers. Just what conventions shall be held or what officers shall be nominated by direct vote, is a matter left with the choice of the general committee of the party in any city or village governed by the law. If delegates are to be elected, they must be chosen under the law, with the exception of those who are chosen by conventions to still higher conventions. Finally, it only applies to those parties having cast at least three per cent. of the total vote for governor at the last election, although smaller parties may elect to come under the act.

Some very important powers are vested in the general party committees by the law, as, for example, the determination of what officers shall be nominated by conventions. In many States where primary election laws have come up for discussion, "machine" opposition has aimed to get some such provision incorporated in the law when its defeat was impossible, because by controlling the party committees it could practically make the law inoperative and retain the old convention machinery. In order to control the committees, it is necessary to retain their appointment by conventions or some other authority already dominated by the "machine." Hence, every effort of primary laws to popularize party organization by submitting the choice of party officials to the voters at the primary, is hotly contested by the politicians.

The New York law provides that all members of general committees, and assembly district and ward committees, in cities of the first class, must be chosen at primary elections on the annual primary day in the month of September of each year. In other cities or villages the party authority may determine whether they are to be elected at the primaries, or by conventions, or by committees, the members of which have been elected at primaries. The members of committees may take office as provided by the party rules, but their entry upon duty must not be later than January 1 after their election. The fixing of a day for the meeting and organization of the committees is also left to party regulation instead of being regulated by statute as in case of the Oregon law of 1901. This law is decidedly superior to the New York law in its provisions for the

maintenance of a strong popular party organization and control, and is deserving of careful consideration on the part of primary reformers who are studying this phase of the question. On the other hand, it may probably be said, that the New York law is superior to any other which continues the caucus and convention system, in its provisions to maintain the independence and integrity of the parties at the primaries, by providing for a thorough system of enrollment, both general and special, and basing the right to vote at a primary absolutely upon proper enrollment with some political party. Many commendations and favorable criticisms have been made throughout the country respecting this provision, and it is well worth close consideration in these pages.

As amended by the act of 1900, the enrollment system is as follows: Each election district is provided with two *original* enrollment books, by the custodian of primary records some time before the fifteenth of September, which is the first day of registration *in each year.* The books have fourteen columns on each page, containing (1) registration number of elector, (2) surnames arranged alphabetically, (3) Christian names, (4) residence, (5) word "yes," (6) name of party, if any, (7) special enrollment, (8) record of transfer, or removal, (9) word "voted," (10) record of challenges, (11 and 12) similar entries as (9 and 10), in case the voter attends the second official primary, (13 and 14) similar entries for third primaries, if any. The enrollment books are turned over to the election inspectors, and are used at the two polling booths during the four regular meetings for registration in each year. Ballot boxes, one for each election district, are provided to re-

ceive the enrollment blanks, which are filled out by the electors when they register. These enrollment blanks are arranged as follows:

"Primary enrollment for year ——; city (or village) of ——; county of ——; —— assembly district (or ward); —— election district.

"I, who have placed a mark underneath the party emblem hereunder of my choice, do solemnly declare that I have this day registered as a voter for the next ensuing election, and that I am a qualified voter of the election district in which I have so registered, and that my residence address is as stated by me at the time I so registered; that I am in general sympathy with the principles of the party which I have designated by my mark hereunder; that it is my intention to support generally at the next general election, state or national, the nominees of such party for state or national offices; and that I have not enrolled with, or participated in any primary election or convention of any other party since the first day of last year. The word party as used herein means a political organization, which at the last primary election for governor polled at least 10,000 votes for governor.

"Make a cross (x) mark, with a pencil having black lead, in the circle under the emblem of the party with which you wish to enroll, for the purpose of participating in its primary elections during the next year."

After having received the enrollment blank and envelope, the voter's name is placed in the enrollment books, and he retires into the voting booth, closes the door, marks the circle beneath the party of his choice, incloses the blank in the envelope, seals it and deposits

it in the ballot box. The word "Yes" is then entered in the fifth column of the enrollment books. The enrollment books and sealed envelopes remain in the hands of the election inspectors until the close of the last day of registration when they are delivered to the custodian of primary records. No copies of the same may be made at the time, and absolute secrecy as to the enrollment must be maintained. The ballot box containing the sealed enrollment blanks remains closed "until the Tuesday following the next succeeding day of general election," when it is opened by the custodian of primary records, the envelopes broken, and the name of the party designated by each elector is entered in the proper column of the enrollment books. This completes the process of enrollment and qualifies the voter for participation in the primary. If, however, he declined to enroll, or if he was not qualified, or changed his party affiliations, there still remains a chance to participate in the primary through a special enrollment.

The provisions of the law of 1899 respecting special enrollment were amended in 1900,[1] and now stand as follows: Any elector who was registered during one of the four registration meetings in the last year, but failed to enroll, may become separately enrolled at any time during the months of May and June, and in any presidential election years in the month of February also, by filing a declaration in the following form: "I, ——, do solemnly declare, that I reside at ——, and am a qualified voter of the —— election district of the —— assembly district (or ward) in the city (or village) of ——; that at one of the last four preceding days of reg-

[1] Session Laws of New York, 1900, ch. 204, p. 432.

istration, I registered as a voter, in said election district, but did not enroll, and I request that I be specially enrolled with the —— party; that I am in general sympathy with the principles of the —— party; that it is my intention to support generally at the next general election, state or national, the nominees of such party for state or national offices, and that I have not enrolled with or participated in any primary election or convention of any other party since the first day of last year. The word "party" as used herein means a political organization which at the last preceding election of a governor polled at least ten thousand votes for governor." Upon the filing of such a declaration the elector is qualified to participate in the primaries of his party.

Electors resident in territory which is annexed to some city or village to which the law is applicable, may become specially enrolled in a similar manner. Any elector who came of age after the last general election may, at any time prior to thirty days before the next official primary day, become specially enrolled by filing a declaration similar to the one just stated, with the appropriate change in phrasing. An enrolled voter who moves to another district may have a transfer of his enrollment made at any time "between the first day of February of any year, and the thirtieth day before the annual primary day, except during the thirty days before the official primary day in March as herein provided." Duplicates of the original enrollment books are made, and sent to the various party committees, but the original books are used at the official primary elections. Except for the period during which the law requires the enrollment records to be sealed, they are open to the in-

spection of the public, and in case of cities above 1,000,000 inhabitants, transcripts of the same are to be published between December 15 and January 1.

Under this system a large enrollment is secured, because every voter is guaranteed perfect freedom to enroll, and dishonesty and injustice on the part of the election officers acting under instructions from a personal "machine," is entirely avoided. The voter, instead of being compelled to make a special journey for enrollment, which is frequently inconvenient, or is not made because of ignorance as to time and place, can enroll upon the day he registers, thus putting the question before him at a time when it is most likely to receive serious consideration. The publicity of the rolls of the parties is secured through the provision that they are to be open after a certain specified time for inspection, and published in the same manner as are the registration lists.

We may next pass to that part of the law which deals directly with the conduct of the primaries. Provision is made for the following primary days: In all cities and villages of the second class covered by the law, there are to be annual primaries held on the seventh Tuesday preceding general election day; in those of the first class, two annual primaries are to be held on the seventh and fifth Tuesdays before election day. On the first of these days, delegates to conventions beyond the county are chosen, and on the second, all other delegates, all committeemen, and all candidates are voted for. In presidential years another official primary is to be held on the last Tuesday of March for the election of delegates to state and congressional district conventions. The ex-

pense of holding these primaries is to be paid in the same manner, and by the same officials, as in case of general elections, and is thus made a public charge. The custodian of primary records, who is a very important officer under the New York law, determines the primary districts, which must be composed of at least two contiguous election districts (the highest odd number, if there be any, comprising one of itself). Each primary district has two polling places. One of these is occupied by the strongest party, while the second is used by all other parties.

At least twenty days before each official primary the chairman of the general party committee must send a certified statement to the custodian of primary records, of the kinds and number of delegates, candidates, or party officials who are to be chosen at the primary. A notice must then be properly published between the tenth and fifth days preceding the primary, of the day, place, and hours of holding the same. The polls must be open from two to nine o'clock in the afternoon. In case of primaries not held subject to this act ("unofficial primaries") similar notice must be given by the proper party officers, at the expense of the party. All unofficial primaries are held at the expense of the parties. Since there are two different polling places within each primary district, two boards of primary election inspectors are necessary. The general election inspectors of the districts comprising the primary, who represent the party which at the last preceding election cast the largest vote, shall act at the primary polling place of that party; while similar inspectors, who represent the second strongest party, are to act at the primary polling

booths of all other parties. They serve under oath, and receive five dollars per day as compensation. Separate ballot boxes and ballots are provided for each party. Sample ballots are to be exhibited, and all official ballots must be readily distinguishable in color.

Due enrollment, which as appears in the explanation of the enrollment plan means *party* registration, is the qualification for participation in the primary. An enrolled voter must, upon challenge, answer questions under oath as to his name and residence. Upon receipt of "one of each of the ballots intended for the electors of the election district in which he resides which are in the polling place," the voter marks his ballot and delivers it to the inspector, who deposits it in the proper ballot box. The voter then delivers, in folded form, all of the unvoted ballots given to him, and these are deposited in a box for unvoted ballots and later destroyed without being unfolded. After the elector has cast his ballot, the term "voted" is entered opposite his name in the proper column of the enrollment books.

In the method of printing, handling, voting, and canvassing ballots, the general election laws govern as far as not inconsistent with this act. Watchers, to the extent of one for each district, may be appointed by every political committee, and by every two or more persons whose names appear upon the ticket. "A reasonable number of challengers, at least one for any three or more persons of each party," whose names appear upon the ticket, are allowed to remain "outside the guard-rail of each polling place."

That part of the law governing the canvass of the voters is very complete, and worthy of closer study than

space permits. It provides for a count in a "clearly-lighted, open room" in plain view of the public. To defeat the purpose of ballot box stuffers, it is provided that when the number of ballots contained in a box is found to be greater than the number that ought to be contained therein, as shown by the enrollment books, one of the inspectors publicly, and with his back to the box, draws out as many ballots as were in excess. These ballots are destroyed without revealing their contents. The returns must be completed by the custodian of primary elections with whom the election inspectors file their statements of canvass within three days after the primary, and proper certificates of election must be transmitted to the successful candidates, delegates, or committeemen. Provision is also made for the proper apportionment of delegates, and for the organization and procedure of conventions which may be held under the law.

New Jersey.

The New Jersey statute books contain three laws pertaining to primaries, passed in 1878, 1883, and 1884. Only one of these, the act of 1884, contemplates direct primaries.[1] It is very rudimentary in form, and merely permits but does not require the holding of direct primaries, their conduct, if held, being left to the political parties. It brings the primary election officers within the pale of law by requiring an oath that they will faithfully perform their duties in accordance with the law of the State, and with the rules of the party.

[1] Session Laws of New Jersey, 1884, p. 323.

Delaware.

In 1887[1] and 1897[2] primary election laws were passed in Delaware applying to New Castle county. These laws are sometimes erroneously quoted as establishing direct primaries when none but "primary assemblages of voters" are contemplated by both of the acts. The act of 1897, which superseded that of 1887, is very fully worked out and seems to rank among the most comprehensive and complete of the so-called "caucus laws" which have yet been enacted.

Maryland.

In Maryland nominations by direct vote have been made in a number of counties for some time, but no law for their control has as yet been enacted, all bills which were introduced having been defeated. As in all the neighboring States, there has, however, been considerable agitation in Maryland in favor of direct primary legislation during the last few years, but "machine" opposition has in this State, as elsewhere, successfully resisted all reform.[3]

[1] Session Laws of Delaware, 1887, p. 59.

[2] Session Laws of Delaware, 1897, p. 375.

[3] One of the proposed laws was read for the first time in the Senate on March 7, 1901. It was optional and comprehensive, including nominations for state, county, and municipal offices. The state central committee, under whose direction the entire conduct of the primary was placed, was "to adopt rules and regulations as to whether candidates shall be selected by direct vote, or shall be nominated by conventions." The general election laws were to apply with respect to the marking, folding, casting and counting of ballots, etc. The open primary system of voting was to be used, only general registration and qualification to vote being required for participation in the primary election. No petition but only fees were required for the presentation of the names of candidates. The party was to cover the expense of ballots and notices, while all other bills were met out of the public treasury.

CHAPTER III.

AN INTRODUCTION TO THE GENERAL FEATURES AND RESULTS OF SOUTHERN DIRECT PRIMARIES.

Direct primaries are common throughout the South. In every State, systems of one kind or another are in operation. They possess no uniformity, and have not been created in detail through statutory enactment, but vary from county to county in each State, according to the rules of the political party through which they are established. They have in common but little more than the general principle of the direct primary upon which they are based, and the freedom from legislative control under which they operate. It is almost generally true that direct primaries existed in the South long before they were legalized by statute. The Democratic party seems to have found this means of nomination convenient and successful, even though there was nothing but the bond of honor to support the results of the primary election. When the southern legislatures finally stepped in to recognize the direct vote system, and this was at widely different times in the various States, they did little more than legalize their action, leaving the use of the system in all cases optional with the political parties. There is at present no movement towards a compulsory state law.

As a result of the existence of optional primaries, some of the difficulties of illegal and fraudulent voting, which arise at the common primaries of all parties, are avoided, since each party may by itself decide whether

it shall hold direct primaries at all, and if so, determine the time, place, and manner of holding the same, as well as the qualifications of those who may participate. To prevent conflicts, the question of precedence in the choice of a date, is, in some cases, detemined by priority of notice of a primary given to the proper officer. Since the expense is borne by the party through the assessment of its candidates, and not by the State, the argument that concurrent primaries would be more economical, and a smaller burden to the taxpayer, has no application here. Should the southern systems, however, be made compulsory, and a public expense, it would be highly desirable on grounds of economy, and for other reasons as well, to hold the primaries of all parties on the same day and at the same places.

Another result of the optional character of southern primaries is that they are almost exclusively employed by the dominant party. While the Republican party generally has a ticket in the field in county nominations, it frequently happens that there is none in case of state campaigns. The expense of Republican campaigns is always incurred in a hopeless cause, and it will be readily seen that the tendency would be towards its reduction to a minimum. Should direct primaries be adopted, they ought in the South, as elsewhere, to be at public expense, otherwise the cost to the candidates would be so heavy, their number being so small, that it would be practically impossible to get men of even fairly good standing and popularity, to stand as candidates merely for the sake of keeping up the party organization.

As a result of the ascendency of the Democratic party

in the South, its primaries have acquired an extraordinary importance. A nomination at a Democratic primary is equivalent to an election. Hence, the struggle occurs at the nomination. The voter's interest centers at the primary. If once his man is carried safely there, all is well, for the election is but a formal confirmation of the results of the primary. His presence at the general election does not appeal to him as being as important and as necessary as at the primary, and so it often happens that a larger vote is polled at the primary than at the ensuing election.

The argument that there is a tendency for the direct primary to assume the character of a general election, to the prejudice of the latter, is sometimes falsely advanced against direct primaries by opponents in the North, who, having heard of the southern experience, neglect to inquire into the causes lying back of it. Where parties are fairly well-balanced, and there is even the slightest probability of success, it is quite inconceivable that any party would allow its victory at the primary to be compromised by default at the general election. Besides, under a general law requiring state, congressional, legislative, and county candidates to be nominated by direct primary, even though one party might be in a hopeless minority in the State, it might be in a majority in many counties in one section, and in congressional, senatorial, or assembly districts in various other sections, in all of which there would be the incentive for a full vote.

The object in using the direct vote system in the South, differs to some extent from that in the North and West, where it is hoped primarily to secure free-

dom from "machine" and "boss" rule in politics. The Democratic party declares that its main purpose is the elimination of the negro vote, while at the same time it also defeats the "machine." This exclusion of the negro vote is accomplished by means of the power delegated by statute to the party authority, to fix the qualifications for participation in the primary election. Great unfairness to the legal negro voter is thus made possible. For example, in one instance, the party rules require that "every negro applying for membership in a Democratic club, or offering to vote in a Democratic primary election, must produce a written statement of ten reputable white men who shall swear that they know of their own knowledge that the applicant or voter cast his ballot for General Hampton in 1876, and has voted the Democratic ticket continuously since." [1] The difficulties which a provision like this creates when enforced by hostile authorities are insuperable, and present ready opportunities for an unfair exclusion of the colored vote.

The southern primary election laws are very rudimentary and imperfect. They contain few positive regulations, and delegate extraordinary powers to the party authorities by authorizing them to prescribe all other regulations that may be necessary for the proper conduct of primary elections. The few provisions embraced in the laws provide mainly for the proper publication of the call for the holding of primaries; the requirement of an oath from primary election officers in order to secure their responsibility to the party and to the State; and the punishment of certain corrupt prac-

[1] Rule 2 of Rules of Democratic party of South Carolina, adopted June 7, 1894.

tices. The great leeway thus allowed to political parties in the conduct of primary elections, is one of the main defects in the southern laws, and is responsible for most of the objectionable results of southern experiences with direct primaries. The party committee is raised to a level of unlimited power, and when it is appointive, the chances for an abuse of its authoritative position are practically certain. This defect is partly overcome in some laws through a provision that the party committee shall be elected at the primary. However, even the popular selection of the committee cannot sufficiently restrain action where such extraordinary powers are lodged.

The defrayal of the expense of direct primaries is left to the parties, under the southern laws. This, as has already been suggested, prevents the Republican party, which under existing conditions is in a hopeless minority, from giving the system a trial. The common means of raising money within the party are by subscription, by voluntary contribution, and by assessment of candidates. The latter is the most common method and furnishes the main source of revenue to the party. This is why the southern systems are so extremely unpopular with the candidates and indeed with most politicians. In some States where majority nominations are required, the burden of two primaries falls upon them, aside from that of an expensive personal campaign, and inflicts serious inroads upon their bank accounts.[1]

Under these conditions it is not strange that there should be found those who are ready to denounce the

[1] South Carolina, Nebraska, and Mississippi require majority nominations.

southern system of direct primaries. One writer describes it as "tyrannical and oppressive on the minority with a tendency to build up a 'machine' within the party, and to perpetuate the party and its 'machine' in power."[1] Similar opinions were expressed by men in other States.[2] This argument, based upon southern experience, is often advanced by northern opponents of the direct primary. It has no force whatever, in consideration of the peculiar political conditions of the South, and the defective and rudimentary laws under which the southern systems are compelled to operate. The party which is said to be perpetuated in power is the Democratic party. It is a well-known fact, however, that this party maintains its ascendency, not by virtue of this or that nominating system, but because of larger numbers and greater voting strength. The Democratic party of the South has been, and is, in control; not only where direct primaries are used, but also where nominatons are made under the caucus and convention system.

That a "machine" should exist within the party is also but natural. There are no legal safeguards around the primary. Party organization and party action are absolutely controlled by a few so-called party leaders, who arbitrarily issue their rules and orders which are given the force of law. What else but "machine" influence can be expected where such irresponsible, autocratic powers are calmly delegated to a narrow group of party committeemen, acting under cover of statute?

The southern systems are also very imperfect in that

[1] Senator Butler in Milwaukee Sentinel, Feb. 27, 1901.

[2] Senator Sullivan of Mississippi, and Representative Lindsay of North Carolina, in Milwaukee Sentinel, Feb. 27, 1901.

they make no provision for the formulation of a platform. No means is provided for the expression of general principles of party policy. No definite body is designated for the formal announcement of the aims and the ideas of national, state, or local administration, which the party members may entertain. No opportunity is afforded whereby the party may publicly pledge itself to such ideas, such policies, and such principles of government. The individual voter is at a loss to decide which party he should support in order to maintain his opinions on public matters. Real party responsibility there cannot be in such cases, because no way is provided in which the party may publicly assume responsibilities. Since the voter objects to casting his ballot in the dark, but demands some assurance as to what general course a candidate would pursue if placed in office, the inevitable result of the absence of party responsibility is the substitution of individual responsibility. If the party as a body cannot pledge itself to specific governmental policies, then each individual candidate must do so, otherwise the ballot would have no significance. And so it has happened that individual platforms are frequently necessary in the South. In some cases there are as many platforms as there are candidates.[1]

Another disintegrating tendency resulting from the failure to regulate the southern direct primaries by statute is that of personal politics. This flows from the extra-legal position of the systems; from the extreme importance given to the position of each candidate by virtue of individual platforms; and from the temperament

[1] Outlook, Vol. 60, p. 146.

of the Southerner. The man who runs for office does not stand upon principles laid down by his party, but must rely upon his own supports, and it is to the interest of his opponents to make them appear as weak and as few as possible. His personal pledges, upon the merits of which he must rely for success, may be wilfully misinterpreted, his actions may be misrepresented, and his statements discredited as insincere. This is largely impossible where the party itself comes forward with formally adopted and solemn declarations of principle and policy which serve as a general platform for all of its candidates. It is the individual candidate who can with propriety be called to account for his platform in the South, and where ambition, coupled with personal animosity, inspires criticisms, it will be seen that this privilege may easily be abused. It is the personal campaign, fought out on an individual platform, for nomination under an extra-legal system, that begets vicious personal politics. Substitute a sound party platform, and a statutory direct vote system, and the incentive and opportunity for personal politics will be practically removed.

That the effect upon government of these bitter attacks and counter attacks engaged in by the aspirants to public office cannot be wholesome, is to be expected. The wound of the slanderous tongue is difficult to heal. Not only do the candidates lower themselves in the estimation of the public, and inflict upon each other the very serious loss of a necessary and healthful respect on the part of the people, but they carry the spirit of hostility into the government itself, and thereby tend to defeat the ends of an efficient administration. This atmosphere

of discord, which frequently envelopes southern politics, tends to keep the best men out of office, and gives those who have once entrenched themselves in public places a decided advantage over their opponents.

It is true of the South that the direct vote system is more popular in the country than in the city. The explanation lies in the fact that in the rural districts the people enjoy all the advantages of the system without its disadvantages. Personal politics is most common and most effective, and at the same time leaves its most unfortunate results, where the population is concentrated. Ignorance as to the merits of candidates and as to the principles and policies of administration for which they individually stand, is more common in the city than in the country. In a sparse population where mutual acquaintances are many and offices few, good feeling is more apt to prevail, than where every man feels himself but an atom of the great mass of an urban population. In rural communities the spirit of good-fellowship is usually stronger than is the thirst for power, and prevents the many evils which lurk in extra-legal institutions from manifesting themselves. For these and other reasons the southern farmer is more enthusiastic over the direct vote system than is his neighbor from the town.

What has been said respecting direct primaries in the South must not be construed as a severe arraignment of their merits. It has, perhaps, been made sufficiently clear that the objectionable experiences which are encountered there cannot be fairly advanced as arguments against the practicability of the general principle of the direct primary, but that these find their cause in the imperfection of the primary legislation; in the extra-legal

nature of the systems; in the peculiar political conditions under which they operate; and in the character and temperament of the people. To give the principle of a direct vote a fair trial in the South, it would be necessary to inaugurate a comprehensive and complete system of public primaries, regulated in all their detail by statute, secured by the safeguards of the Australian ballot system, subjected in all their aspects to the control of the State, with proper provisions for the presentation of candidates to the public; for the maintenance of a representative party organization through the submission of the choice of party committeemen to the voters at the primary; and for the promulgation of a party platform by a legally determined body which is directly representative of the individual members of the party.

Such a law would afford a firm and broad foundation for systematic and responsible party action, and would undoubtedly yield better results than are attained under the present systems. The direct primaries have probably come to stay in the South in spite of the difficulties with which they are involved. Rather than return to the caucus and convention system the people of the South, as elsewhere, hold fast even to their imperfect direct primary systems. But we may hope, and with some reason expect, that the success of the more thoroughly legalized systems in the North will lead to a movement in the direction of more complete laws, giving the southern systems a safer legal setting, and depriving the leading party spirits of those irresponsible and autocratic powers which to-day are the greatest menace to political liberty in the South.

CHAPTER IV.

SOUTHERN DIRECT PRIMARY LEGISLATION.

South Carolina.

The first legislation in South Carolina concerning direct primaries was enacted in 1888. The direct vote system had, however, been in operation in this State for some time before its passage. The law was compulsory in the sense that whenever any political party held an election for the purpose of choosing candidates, or for the selection of delegates to conventions, such an election was to be conducted subject to the act, but the political parties were not compelled—nor are they at the present time—to nominate any of their officers at direct primaries.

As in the case of most of the southern laws of to-day, great power was given to the political parties by allowing them to prescribe all rules and regulations for the conduct of the primary outside of the few unimportant provisions laid down by law. The manager of the primary election, whose general duties were outlined by the act, was required, before receiving any ballot, to administer to the voter an oath that he was duly qualified to vote according to the rules of the party, and that he had not participated in any other primary. This law was extremely rudimentary and imperfect, but was a step in the right direction, in that it to some extent curbed the irresponsible powers of the party authorities, and partially secured the individual members of the party

against the arbitrary rules and practices of party "bosses."

The act as passed in 1888 [1] is still in force largely in its original form, although several minor amendments have since been made. The provision that primary election "managers" were to take an oath faithfully to perform their duties, in failure of which fines were to be imposed, greatly strengthened the position of the party authorities who prescribed the rules, for however bad the rules might be there was no escape from their execution. Protests on part of honest primary "managers," where the politicians had failed in placing their own subordinates, were of no avail.

Considerable abuse seems to have developed, especially in the large cities, because of the appointment of the primary election officers by the party authority. As a result, the act of 1888 was amended in 1896,[2] so as to allow candidates in cities of 40,000 inhabitants or more, to appoint watchers at all the polling places to see to their interests. It was also found that a considerable number of unqualified persons participated in the elections. To remedy this, the act of 1896 contained a provision that henceforth only previously registered voters were to be allowed to vote, though party registration was not required. In 1900 an act was passed [3] which allowed candidates in cities of 20,000 instead of 40,000 or more inhabitants to appoint watchers, and required party registration of voters under regulations to be prescribed by the rules of the party in place of general reg-

[1] Session Laws of South Carolina, 1888, p. 10.
[2] Session Laws of South Carolina, 1896, p. 56.
[3] Session Laws of South Carolina, 1900, p. 375.

istration under the law of 1896. Such party registration was, however, to be compulsory only in cities of 20,000 population and over.

Upon this limited legal basis of the primary, there has risen in South Carolina a very elaborate system, filled out in all its details, both important and unimportant, by rules prescribed by the party authority. As a primary system it is perhaps the most complete of all those found in the South. Its operation is, however, here, as well as in the other southern States, confined in practice to the Democratic party. No candidates for state or county offices, except in one or two counties, for county offices, have been nominated or suggested by the Republican party, and there is invariably only one ticket proposed in the state election. It is claimed that the vote is generally very light, and that little interest is taken in the various candidates.[1] Nevertheless it has been adhered to very tenaciously by the members of the only party which has given it a trial.

The method of conducting the primary is, in brief, as follows: The candidates for state and congressional honors file with the state central committee of the party a statement that they are candidates for certain offices, with a pledge that they will abide by the results of the primary. Thereupon the state committee arranges a series of campaign meetings to be held at the several county seats, and the candidates go upon the circuit, and at these meetings set forth their claims and qualifications, and, if so disposed, attack the records and merits of their opponents. For county and legislative positions, candidates file similar statements with the county com-

[1] Hon. R. Cooper of South Carolina, in Milwaukee Sentinel, Feb. 27, 1901.

mittee. This body also arranges a series of meetings throughout the county. Almost invariably candidates publish cards in the public print announcing their candidacy. At the primary elections which follow, all officers, appointive as well as elective, are voted upon by the electors, and the wishes thus expressed respecting the appointive positions are respected by the governor and the legislature in placing appointments.[1] Tickets for the state offices are printed with blank spaces under the titles of the offices to be voted for, where the voter may write the name he prefers. The expense of holding the primary election is defrayed by making assessments on the various candidates, and is often a considerable burden. It will be seen that the larger the number of candidates, the smaller will be their individual assessments, and that where few candidates are in the field the assessments are correspondingly heavy. This tends to keep capable men of moderate means, when unsupported by moneyed politicians, out of the contest for office.

No person is allowed to vote unless he has been enrolled on the Democratic club list at least five days before the primary election. Any white person twenty-one years of age may become a member in a Democratic club by proving his party affiliations. A negro encounters many difficulties. He "must produce a written statement of ten reputable white men, who shall swear that they know, of their own knowledge, that the applicant, or voter, voted for General Hampton in 1876, and has voted the Democratic ticket continuously since."[2]

The polls are to be open from 8 o'clock in the morn-

[1] Outlook, September 10, 1898, p. 146.
[2] Democratic party rules adopted June 7, 1894.

ing to 4 o'clock in the afternoon. The Democratic county executive committee tabulates the returns and declares the result of the primary, except for congressmen and for solicitors, in which case the state executive committee makes the returns. Majority votes are required for the nomination of candidates and for the selection of delegates to the state convention. A second primary, when necessary, is called at least two weeks after the first. The contest is in such cases confined to the two highest candidates. The voter is well satisfied with this arrangement. His additional duty is limited to a second trip to the polls, whereby he prevents the "machine" from concentrating its vote upon an undesirable candidate and carrying him at the primary on a bare plurality vote. But the extra expense falls entirely upon the candidates, and is a severe drain upon their funds.[1] However, the provision for majority nominations seems to operate as a preventative rather than as a cure, so that the necessity for second primaries does not frequently arise.

The experience with the press seems to have been generally favorable in South Carolina. Candidates have in the main, it seems, received fair treatment. Extortion, such as is claimed was practiced in Ohio, does not appear to have been resorted to by the newspapers. There are those, however, who severely arraign the South Carolina press. Hence, it is extremely difficult to arrive at a fair conclusion upon this matter without an even more extended investigation than the writer was able to make.

Owing to the overwhelming strength of the Demo-

[1] In Mississippi candidates are permitted to decide beforehand whether a majority or a plurality vote shall nominate.

cratic party in South Carolina, a nomination within its ranks, is equivalent to an election. Because of this decisive character of the primary, it eclipses the general election both in the interest aroused and in the vote polled. At the direct primary held September 1, 1900, 90,000 out of a total of 120,000 white voters cast their ballots, while but 30,000 votes were polled at the ensuing general election.[1] Certain it is, that in the North and West, and wherever parties are fairly well balanced, a light vote at the general election would rarely, if ever, occur, because of the risk of defeat incurred by the party whose voters failed to cast a full vote.

North Carolina.

No direct primary law has as yet been enacted in North Carolina, but in accordance with a resolution adopted by the state convention of 1900, the Democratic state committee issued a call for a direct primary for the nomination of candidates for the United States senate. The primary was held on the day of the presidential election, and authorized all white voters to participate who supported the Democratic ticket at the recent state election, or who intended to do so at the national election. The results of this trial look favorably to an extension of the direct vote principle in this State.

Virginia.

In Virginia no general state primary election law has as yet been put in operation. Nor is there any compulsory law applying to counties. Numerous optional

[1] Outlook, September 8, 1900, p. 91.

acts regulating direct primaries in the counties have, however, been passed within recent years, all of which are more or less incomplete, although the later acts of 1896 and 1898 are decided improvements over those of 1892 and 1894. The act of 1892 applied to the city of Portsmouth in Norfolk county.[1] It empowered candidates to appoint primary election officers, and to pay them, out of the funds provided by a general assessment of all candidates. In 1894 an act was passed which legalized primary elections in the city of Richmond located in Henrico county.[2] The main provisions of this law were incorporated in the more complete act of 1896,[3] applying to both the county of Henrico and the city of Richmond.

Like all the preceding acts, the one of 1896 was optional, and provided for spring and fall primaries. All supplementary regulations—and they were many—were to be prescribed by the party holding the primary. The expense also fell upon the party. Three primary election officers were to be selected by the county judge from lists of three submitted by the various candidates. They were to receive two dollars for their services; were required to act under oath; and possessed "all rights, powers, and privileges of general election officers." One of the important features of the law was the detailed manner in which it safeguarded the printing of ballots, and their distribution to polling places in carefully ascertained sealed packages which were not to be opened until the day of the primary election.

During the same year an act was also passed legaliz-

[1] Session Laws of Virginia, 1892, p. 1029.
[2] Session Laws of Virginia, 1894, p. 417.
[3] Session Laws of Virginia, 1896, p. 414.

ing primaries in the counties of Accomac and Northhampton, both of which lie on the peninsula. This act made the holding of direct primaries lawful in the two counties, and charged the local executive committee with the prescription of party rules and the appointment and payment of primary election officers who were to act under oath. A notice of five days was required for the holding of a primary. The general election laws were made to apply as far as practicable. In 1898, another and last act was passed legalizing primary elections for the nomination of city officers in the city of Charlottesville, Albermarle county. Practically the entire control and regulation of the primary is left in the hands of the party, and primary election officers are made responsible to it through an oath. The party committee is given extraordinary powers by being vested with the right of making up its own list of voters, and the fact that a name appears on the list is to be taken as *prima facie* evidence of a right to vote, and no challenge is allowed. Thus a party committee can determine who shall and who shall not vote at a primary. It will be noticed that all of these acts do little more than legalize direct primaries, and provide but a crude and imperfect structure for the operation of a system created, in all of its really vital features, by the party authorities. In this respect the Virginia laws are quite typical of southern direct primary legislation, which permits party rules to stand where state statutes ought to control.

Georgia.

In 1887 an act was passed in Georgia which plainly indicates that here, as in many other States, direct primaries were resorted to by the political parties before

they were in any way recognized by statute. This act imposes a penalty for the sale of liquor on primary election day, and defines a primary as "an election by ballot for the nomination of candidates for office as opposed to nomination by conventions."[1]

The act of 1891 [2] not only legalizes the holding of direct primaries, but also provides some positive rules for their conduct. It is optional, and provides that all primary elections held by any political party for the purpose of choosing candidates for office, or for the election of delegates to conventions, are to be conducted in a manner prescribed by the rules of the political party and executed through managers elected by the party. The managers are forced to swear that they will conduct the primaries in accordance with the provisions of this act, and also in accordance with the laws of the State governing regular elections. The qualifications of voters are determined by the general election laws, and by such additional requirements as the political party may see fit to adopt. Challenges are allowed. The notice of the primary election must contain the time and place of holding the same, as well as the requirements for participation in it. The duties of the primary election officers are outlined, penalties for their violation imposed, and perjury and illegal voting punished. This act, like those in force in neighboring States, leaves all important rules to be prescribed by the party authorities. In accordance with them a declaration of party affiliation is required, and the expense is borne by the candidates through assessments. Because of this latter feature the direct pri-

[1] Session Laws of Georgia, 1887, p. 42.
[2] Session Laws of Georgia, 1891, p. 210.

mary system is not popular with candidates of small means, and together with other features very similar to those of the South Carolina system, serves to entrench men in office who have once located themselves in the public service.

Florida.

An optional direct primary law was passed in Florida in 1897.[1] It must, however, be remembered that in many States direct nominations were made by parties long before any primary laws were placed upon the statute books for their control, so that 1897 does not necessarily indicate the year in which the direct primary system was inaugurated in that State. According to the law, twenty days' notice must be given whenever the executive committee of any political party decides to hold a primary election. In case the executive committee fails to call such an election, and the majority of the qualified electors petition it to do so, it must comply under penalty of law. To participate in the primary, general election qualifications are required, but the executive or standing committee of the party may impose additional qualifications by declaring "the terms and conditions on which legal electors shall be regarded and taken as proper members of the party." The right to challenge is assigned to every member of the party holding the primary election. The general election laws apply, as far as it is expedient, to regulate the compensation of the inspectors and clerks, and to provide funds for defraying the expense of conducting the election by assessing the various candidates for nomination. The act

[1] Session Laws of Florida, 1897, p. 62.

requires that the notice of the primary election state the time and place of meeting and the names of the officers who are to conduct the same. It defines the main duties of these officers, and imposes penalties for some of the most common corrupt practices.

Alabama.

The only primary election act upon the statute books of Alabama was passed in 1899.[1] It is optional. Section nine specially provides that nothing in the act "is to be construed as making primary elections, as a means of selecting the nominees, obligatory upon any political party." No important positive rules for the conduct of primaries are laid down, all this being left to the political party. Certain common corrupt practices are forbidden; the sale of liquor is made a criminal offense; and the sheriff is ordered to maintain peace and order at the polls. The rules adopted by the Democratic party in the State closely resemble those of South Carolina, which were given as generally typical of the primary election regulations of the southern States.

Mississippi.

The Mississippi direct primary law is optional.[2] Whenever a state, district, or county committee shall order a party primary election to be held, the executive committee of the county is compelled, at least thirty days prior to the time designated for holding the election, to appoint the officers to conduct the same, who

[1] Session Laws of Alabama, 1899, p. 126.
[2] Annotated Codes of Mississippi, 1892, ch. 105.

shall fairly represent the different factions within the party ranks, if there are any. The committee directing the primary is empowered by its rules and regulations to determine the qualifications requisite for participation in the primary "as a proper member of the political party." Challenges are allowed. A majority of votes is required to nominate, unless all candidates for any office agree beforehand that the one receiving a plurality of the votes cast shall be declared the nominee. When a majority is required and no one is elected, a second primary is held in which the votes are confined to the two candidates who ranked the highest at the first primary. Contests are decided by the proper executive committee. The general election laws are in force as far as applicable. No official ballots are required, nor are they paid for at the public expense, but the voters may procure their own ballots. Voting booths or stalls are not required. Delegates are so prorated as to represent as near as possible the popular vote cast in the primary election, and when there is a difference of opinion or choice among the members of the party, each faction shall have its proportion of representation in the county convention. As the party county committee has extraordinary powers under this statute, a provision is made that on petition of one-fifth of the members of a party, this committee shall be elected; otherwise it is to be chosen "as the party may determine." Since by "party" here is meant "party authority" it is evident that the committee might, without this provision, practically perpetuate itself, and regulate the primary elections at will.

The Mississippi law presents several new features:

The election of the most important party committee on petition by the voters; the use of an unofficial ballot; minority and fractional representation in conventions; and majority nominations, or, at the choice of the candidates themselves, plurality nominations. It has been impossible to obtain definite information from any reliable sources as to the working of these interesting provisions. But the fact that no voting booths or stalls or official ballots are required by law, together with other weak points, does not speak for great success. Yet it is claimed that the direct vote system is an improvement upon the old convention plan, and while the defects in the law necessarily militate against the best results that might be attained, it, nevertheless, has sufficiently demonstrated the advantages of the direct vote principle to give it a secure place in the nominating institutions of Mississippi.

Louisiana.

In 1900, the legislature of Louisiana passed a law entitled, "An act to preserve the purity of primary elections."[1] This appears to have been the first enactment concerning primaries placed upon the statute books of that State, although the Democratic party has nominated its officers under the direct vote plan for a number of years. Under this act the holding of direct primaries is optional with any political party which polled at least ten per cent. of the entire vote at the last preceding election. Aside from the imposition of penalties for fraud, perjury, intimidation, and other corrupt practices, a few positive rules are laid down. There are to be from

[1] Session Laws of Louisiana, 1900, p. 203.

three to five election officers, who must be qualified voters, and who are to be selected as equally as possible among opposing factions, or individuals, and are bound by the regulations of the political party for which they act. Great stress is laid by the law upon the form of the call for a primary election. Such a call must give the time and place; the names of the conducting officers; the object of the election; and the qualifications required of voters in addition to those prescribed by the general election law, and by the Constitution of the State. Before issuing a call, the political party must adopt a resolution which shall set forth that the state central committee, and the various district and parish committees, calling the primary election, shall have the power to adopt such rules and regulations for its conduct, as they may deem fit, provided this act is not violated. These regulations are thus given the force of law, and enable unscrupulous party authorities to play the part of tyrants, by exercising their unlimited power of determining who shall participate in the primaries.

Texas.

The only legislation bearing upon direct primaries in Texas is the act of 1895, which merely recognizes and legalizes the direct nomination system by defining and punishing some of the most frequent corrupt practices "at any primary election called and held by authority of any political party for the purpose of nominating candidates for office." A great many counties throughout the State have adopted the primary election system for the nomination of candidates, and also for the selection and

instruction of delegates to conventions. These elections are supposed to be held under the general election laws as far as possible, but the Australian ballot is in use only in cities of 10,000 population and over, and the great leeway given to political parties makes the primary act of 1895 practically a dead letter. The operation of the inefficient statute of 1895, under the imperfect general election laws of Texas, has not been generally satisfactory.[1]

[1] Correspondence Secretary of State, Texas.

CHAPTER V.

DIRECT PRIMARIES WHICH ARE REGULATED LARGELY BY PARTY RULES.

Pennsylvania.

In Pennsylvania no complete primary election law has as yet been enacted. The only laws of general application throughout the State were placed upon the statute books in 1881 and 1883. The act of 1881 aims at the prevention of bribery and fraud at primary elections, and binds the primary officers by an oath to act in accordance with the law of the State, and with the rules of the political party.[1] Penalties for violations of the law or of the party rules are imposed. The law is a mere farce, and its regulations are regarded only when it suits the majority.[2]

The act of 1883 is an amendment of the previous law and penalizes the furnishing of fraudulent tickets at general or primary elections.[3] Aside from these imperfect general laws, several local acts applying to counties have been in operation for about thirty years. They are very imperfect, and leave the prescribing of the main primary regulations in the hands of the political parties. A number of counties use the direct vote system, each operating it under its own party rules, which in some cases are preserved in pamphlet form, but more generally are unwritten, and are proven by oral testimony

[1] Session Laws of Pennsylvania, 1881, p. 128.
[2] Correspondence.
[3] Session Laws of Pennsylvania, 1883, p. 92.

in case of contests.[1] In other counties nominations are made by conventions, pure and simple, each delegate having one vote; while in still others, a combination system prevails, by which the nominations are also made in conventions, but each delegate votes the total number of votes polled in his district by the party at the preceding state election.

It is in Crawford county, Pennsylvania, that the historic Crawford county system of direct primaries was first put in operation, about the year 1868. From 1868 to 1872 there was considerable agitation in Pennsylvania looking to popular primaries. So great was the demand for better methods of nomination that the Union League of Philadelphia offered high prizes for essays on the subject. Two counties took the lead—Crawford and Delaware on the northeastern and southeastern extremes of the State. They adopted different systems. Crawford county looked only to the popular vote and left this unchecked. The primary ticket was voted for as a whole, no one office bearing any apparent relation to the other.[2]

This time-honored system has grown famous as the first instance of a nomination of public officers by direct vote of the party members. There can be but little doubt that the first trial of the principle of direct nomination was made in Pennsylvania, although an act regulating primary elections was enacted in California in 1866,[3] just two years before the inauguration of the system in

[1] Correspondence of George W. Guthrie, Pittsburgh.

[2] Mr. Cooper, editor of Delaware Co. American, and author of American Politics, quoted in Wisconsin State Journal, Sept. 4, 1901.

[3] See Session Laws of California, 1866, p. 438; also discussion under head of California.

Pennsylvania. The California law was the first primary election law passed in this country, but it does not seem to have regulated direct primaries, for, from its wording, as well as from contemporary discussions in the San Francisco Bulletin, the plausible inference may be drawn that direct primaries had not been in operation anywhere in the State prior to the enactment of the law. However, this is a matter of but historic interest. What is of more importance at present is the practicability of the principle involved. In recent discussions, the old-time experiences of our forefathers with the Crawford direct primaries, have sometimes been advanced as valid arguments both *pro* and *con*. Great care is necessary in presenting such statements, for it must be remembered that the Crawford system of 1868 had about as little in common with our modern direct primary systems operating under detailed laws, such as the Hennepin county system, as had Noah's ark with our modern ocean steamers. Both were based upon a common principle, and operated for a common purpose, but further their resemblance can be carried only with great difficulty and circumspection.

Reference has already been made to several local primary election laws. One of these is found in Crawford county. It was passed in 1872, four years after the first trial of the system. It provided that primary election officers take an oath faithfully to perform their duties in accordance with the party regulations. Primary election judges were compelled to entertain objections to votes that were offered, and where a challenge was made they were to interrogate the person challenged under oath. A penalty was imposed for false swearing. The act was

optional, and could be adopted by vote of the party executive committee, or it might be submitted by the committee to a vote of the party. It will be noticed that this law is very incomplete, but better than none at all. Since no general law regulating primaries exists in the State, and since no amendment to the local act just outlined was passed, the Crawford county primaries have been mainly a party affair, and as such, subject to all the machinations, electioneering, and corruption that find their way into extra-legal party activity.

Concerning the experiences with the system, Mr. Cooper, before quoted, writes somewhat as follows: "The direct vote plan certainly was forced to operate under insuperable difficulties in this county. There were several cities of considerable size, the tremendous development of the oil fields was creating millionaires by the year, and the large proportion of dependent laboring population gave every opportunity for corruption and for the purchase of votes by candidates. . . . The writer could name three score and ten who struggled in this way (buying votes), now winning, now losing, and always losing to the richer man. Under this system in a county with several very populous towns, discontent followed because of the greed of the towns. These could pool their votes and 'get away' with the leading offices, . . . In strictly farming communities containing no great towns or cities, and having few, if any, very wealthy men, the Crawford county system is an ideal one, for it is *free* and ought to be *honest.*" In addition to the purchase of votes, and the domination of populous centers through the concentration of candidates, fraudulent voting, and minority nominations, were also quite common.

Similar experiences were encountered in California,[1] and elsewhere, where the Crawford system based upon *freedom* and *honesty* in politics was tried.

Mr. Cooper's statement that the Crawford system is the ideal one in farming communities having few wealthy men, because it is free and *ought* to be honest, is certainly true, and seems tinged by an unconscious stroke of irony. In a community where politics is simple and honest, and where wealth does not abound, there is no reason why a "free" convention system should not succeed, as well as a free direct vote system, or any other. The Crawford system was not a success because of its great "freedom" from legislative control. It merely substituted a "free" primary for a free convention, leaving its operation just as before in the hands of the controlling corrupting forces within the parties. The very purpose of the system was to remedy the political evils where populations were concentrated, where wealth was plenty, and where honesty was rare. There was great need of the strong hand of the State acting through a complete primary law, depriving politicians of that freedom which is license and abuse, and restoring to every citizen true liberty, which he might maintain through the prompt performance of his duties at a legally protected primary.

Two years after the inauguration of the direct vote system in Crawford county it was also adopted in the county of Lancaster. Here the "single delegate system," i. e., a delegate to each voting district according to voting strength, was displaced. This latter plan had led to constant quarrels between the little and big districts, the

[1] California correspondent in New York Nation, Jan. 26, 1882.

little districts refusing to concede representation proportioned to the number of voters, and when the chance was presented the greater numbers compelled the adoption of the Crawford system in 1870. One year later the legislature of Pennsylvania passed the first local primary act, which was also the first direct primary law enacted in this country. It legalized the direct vote system in the county of Lancaster.[1] This is the original law from which the Crawford county law of 1872 seems to have been taken as an exact copy. Since the imperfections of the latter have already been discussed, it will be unnecessary to dwell upon them again here. In 1872 an act amendatory of the Lancaster act of 1871 was passed, which provided that the primary officers might administer the oath to each other, and that the president of the returns and the judges and clerks had to be sworn.[2]

Delaware county has already been mentioned as having adopted a new system of nomination contemporaneously with Crawford county. Experience seems to have proven the system a very creditable device. It enjoyed the distinction of comprising all the virtues of delegate representation together with the popular vote. The delegates were appointed according to the number of voters. The latter instructed them for first and second choice as to all candidates. The returns of the elections were sent with the instruction certificates in advance to the chairman of the convention, and if a delegate violated his instructions the chairman was directed in the presence of the whole convention to cast the vote in his place. Taken in connection with the state primary statute, which

[1] Session Laws of Pennsylvania, 1871, p. 1001.
[2] Session Laws of Pennsylvania, 1872, p. 96.

makes the primary rules of the party law, it was the best of all the systems known. Bradford, Chester, and many other counties adopted it.[1]

Here we have a strong argument in favor of the direct primary, for experience proved that where the delegates were forced to vote as the people wanted them, where they were mere machines, or "living ballots," through which the people chose the candidates that they deemed fit for office, good men were elected. In other words, the people proved themselves competent to select competent officers. Moreover, since the delegates voted according to the numerical strength of their constituents, the result could not have been materially different from that of a direct primary vote, while the first and second choice feature[2] of the system insured the election of the most desired men.

One criticism, however, may be passed upon this system of nomination, because of the fact that the delegates can exercise no free choice, but are absolutely bound to the support of particular men. What is the need of delegates and of conventions, when the nominations have to all intents and purposes been determined by popular vote at the primaries? This machinery seems superfluous, and an unnecessary burden, for the same results could probably have been effected through the substitution of a direct primary ballot for a living, instructed, delegate ballot. Why take the time and money of busy men to act as delegates? Why run the chances of misunderstandings; of a substitution of fraudulent instructions; of mistakes on part of the chairman; of his cor-

[1] Cooper in Wisconsin State Journal, Sept. 4, 1901.

[2] See close of chapter III, Part III, for discussion on first and second choice.

ruption or deception, and the countless other contingencies that might arise and defeat the successful operation of the system? There is a real positive danger lurking in nomination machinery of this stamp as has already been indicated.[1]

In 1872 the provisions of the Crawford county act of the same year were also extended to the county of Erie, where political conditions proved more favorable to direct primaries. In 1879 a local act applying to Beaver county was passed. It differed from the preceding acts in that it was somewhat less complete in some respects, but contained an improvement by providing a formal oath for primary officers, by imposing penalties for acting without being sworn, for a violation of party rules, for the illegal rejection or acceptance of votes, stuffing of ballot boxes, and the like.

In Lackawanna county direct primaries have been used for the Republican party since 1898, although no act regulating them appears on the statute books. Party organization is maintained as follows:[2] The precinct vigilance and executive committees are elected by the voters. The county committee is chosen by the candidates and the chairman of the county convention. It has the power of fixing the date for annual primaries; of assessing the candidates in proportion to the "term and emoluments" of the office for the defrayal of primary election expenses; and of prescribing the primary rules. Under the present rules all Republicans who voted at the last preceding primary, or who will come of age before the next election, may participate at the polls of

[1] See Part I, chapter V.
[2] Lackawanna County Republican Primary rules.

the party primary. Challenges are allowed, and a sworn declaration of affiliation with the party is required as a successful answer.

The multiformity of the primary systems which are in operation in Pennsylvania, and the almost entire absence of legal control, have given rise to much dissatisfaction. Rules differ from county to county, and every party is its own master in their prescription. A voter's change of residence necessitates his familiarization with new methods of voting, while the possibilities of an abuse of power on part of the controlling spirits of the party organization have proven many. The grievances of the voter at the party primary have been growing rapidly of late because of these conditions, and the result has been a wide and spreading agitation in favor of legally controlled direct primaries. During the last campaign in Pennsylvania the various political leaders promised their followers support to measures for the reform of both the general and the primary election laws.[1] Committees have been appointed to draft direct primary bills, while numerous enthusiasts of the primary reform movement have set themselves at similar tasks, and have disseminated their ideas of reform throughout the State. The outcome will probably be the early enactment of practical direct primary legislation.

Ohio.

In the State of Ohio the direct vote system was used by the political parties[2] long before any law for its regulation was enacted. It did not include nominations for

[1] Correspondence of Arthur Dunn, Scranton, Pa.
[2] Mainly the Republican party.

state offices, but was confined exclusively to certain counties,—mainly those including the larger cities of the State.[1] The primaries being left entirely under the control of the parties without statutory legislation, there soon developed numerous abuses as a result of factional difficulties and fraudulent voting. These were most pronounced in the larger cities, and finally demanded the intervention of the State. As a result the direct primary law of 1898 was put upon the statute books.[2]

This law is optional, and provides for the holding of primary or nominating elections by the two political parties for whose candidates the largest number of votes were cast for offices of the State, at the last preceding election, in cities of the first grade of the first class, and in any county containing such a city, for the nomination of county, township, municipal, or judicial officers, or members of the assembly, representatives in Congress, and members of central or executive committees. These provisions limit the act to the Democratic and Republican parties in Hamilton and Cuyahoga counties in which lie the cities of Cincinnati and Cleveland respectively. There are to be fall and spring primaries held one month before the general elections. The polls are to be open from six o'clock in the morning to two o'clock in the afternoon, except in townships and villages where they may close at ten o'clock in the morning. Any other political party, besides the two strongest, may hold primaries under the law with the approval of the board of elections. Each party participating in the elections is provided with its own ballot boxes and distinct ballots. Candidates are required to file petitions signed by at

[1] Cuyahoga (Cleveland), Franklin (Columbus), Hamilton (Cincinnati).

[2] Session Laws of Ohio, 1898, p. 652

least ten per cent. of the electors in case of precinct offices, by five per cent. in case of ward or township offices, and by 300 voters in case of city or county offices, and for congressmen. In order to participate in the elections, it is necessary to be a legally qualified voter, and no person is considered a member of any political party for the purpose of voting at its primaries, unless he has before openly affiliated with the party.

The executive committee of the party must each year by a majority vote decide whether nominations are to be made by direct primaries, or by conventions, and unless this committee gives a notice to the board of elections at least seventy-five days before the day fixed by law for the holding of primary elections in September, or sixty days before those in March, that the party desires to elect delegates to a nominating convention, then the candidates must be nominated by direct vote. If conventions are to be held, all delegates must be chosen by direct vote. Vacancies in nominations are to be filled by the proper executive committee of the party. When no petition has been filed for placing names on the official ballot in behalf of a political party, then no election is held by that party. The primary election officers receive five dollars per day for their services, and are appointed by the board of elections, which body also prints the ballots, and appoints the clerks to receive them. The general election laws are extended to the primaries as far as applicable. Under this law the direct primaries of the two counties mentioned, are still conducted. How far it has been adopted by the other counties which use the direct vote system,[1] was not ascertained. Sentiment

[1] Franklin, Lucas, Crawford, Montgomery, Clark, Champaign, Fayette, Madison.

appears to be in favor of a more general and compulsory law.

Since the Cleveland system of direct primaries is considerably quoted in discussions upon the question of primary elections, it may be well to investigate briefly some of the main results of its operation. The system has been used by the Republican party almost continuously since 1887,[1] while the Democratic party has generally made its nominations through conventions, except in the year 1901, when it also adopted the direct primary. One of the more or less unusual difficulties which the system encountered in Cleveland was the tendency toward factional politics.[2] Not that the system itself was productive of turbulent politics, but that it was forced to operate where a spirit of discord and hostility commonly seemed to prevail among the local political leaders. Since the law of 1898 applies in this city, it is unnecessary to recount the characteristics of the plan. It must be said, however, that while the requirements of the law are good as far as they go, they are not complete, and are but incidental to other important features which must be incorporated in law before a fair trial of the principle involved can be secured. As things were, the operation of the system was only partly satisfactory. Owing to the prevalence of party dissensions, minority nominations were complained of, and party unity was constantly threatened through the factional control of party organization. A redeeming feature, however, demonstrated itself in the fact that the Republican pluralities at the general election have increased from an

[1] In 1892 nominations were made by convention.
[2] Outlook, September 24, 1898, p. 251.

average of about 2,500, to about 7,500, since the adoption of the system.[1]

Another difficulty was encountered in the form of fraudulent voting. The absence of a proper registration and enrollment plan, has allowed of the practice of bringing Democrats to Republican primaries in order to decide factional fights.[2] At the primary election for mayor held February 21, 1901, the total vote cast for the four men running was 31,736, while at the general election which followed they received but 29,758 votes, or 1,978 fewer than were cast at the primaries. The inference, it is claimed, was that a large number of voters participated in the primaries who did not intend to vote the Republican ticket at the general election. The direct vote system, however, clearly showed that the interest of the voter in nominations is greatly increased, and that the men chosen are more representative than under the convention plan. Under the latter, 5,173 votes were cast at the Republican primaries in 1892. The next year, under the direct vote plan, 14,123 votes were cast; in 1896, 23,965; and at the spring primary in 1899, 28,000. All this in spite of the fact that the primary elections were not held on registration day, which would undoubtedly have increased the total turn-out.

The objectionable experiences encountered under the system, may fairly be attributed to the imperfection of the act of 1898 which governs its operation. Several desirable improvements in the law may be suggested. In the first place, it should be mandatory throughout the State, thereby placing all parties upon the same plane,

[1] The system has been in operation since 1887. How much of this increase is represented by the growth in population and the resulting increase in the total number of votes cast?

[2] Outlook, September 24, 1898, p. 252.

with the same *modus operandi,* which in time would become familiar to all citizens. Second, primary election day and registration day should be made concurrent. At present the party dictates the time of the primary, with the result that the attendance, while larger than under the convention system, is often very light, and made up principally of office-seekers, office-holders, and their friends. Annual registration days are known to call out more voters than does election day, and if the voters were enabled to perform the duties of registration and of primary voting on the same day, the attendance at the polls would undoubtedly be greatly increased. Third, in order to prevent fraudulent voting by members of opposing parties, a thorough enrollment plan ought to be adopted under which a permanent party roll is kept revised and corrected and up to date, at all times, with the provision that enrollment is the qualification for participation in the primary. In this way party lines would be kept intact, and party votes would be fairly represented. Fourth, the foregoing improvements would make the selection of party committeemen at the primary preferable to their choice by delegates to a county convention, and would tend to overcome the subjection of party organization to factional control. The necessity of a more perfect law seems to be generally felt, and last year resulted in the introduction of a bill into the legislature incorporating some of the important improvements which have been suggested.[1] Although this bill was defeated it plainly demonstrated that there is a growing sentiment in favor of a more thorough direct vote system which will overcome the difficulties of the present system.

[1] Outlook, February 17, 1900.

Tennessee.

In Tennessee no direct primary law has as yet been enacted, but direct vote systems originating with the parties, have been in operation in a number of counties of the State. These systems are very similar to those in operation in certain counties of Ohio and Indiana. They are used especially by the Republicans in their stronghold in the eastern part of the State. Since these systems have no legal sanction, there is no safeguard against fraud, except the honor of the party managers. The consequence has frequently been that grave wrongs were done for which there was no remedy save factional repudiation. The expenses are borne by the candidates. The congressional committee calls the primaries and fixes the time for holding them, as well as the rules and regulations for their conduct. It seems that the systems are all very popular with the people, but the expense is a heavy burden on the candidates.

Acts were passed in 1885 and 1890 aiming at the improvement of the nominating institutions of the State. The act of 1885 imposed general election qualifications for participation in primary elections, while the one of 1890 regulated the use of proxies at conventions. A further step was taken in 1899,[1] when a primary election law was passed which applies to all counties ranging in population from 100,000 to 110,000. It "regulates the holding of all primary elections," which apparently includes direct, as well as indirect, primaries. The law extends the general election laws, as then applicable to the elections held in counties numbering 90,000 inhabitants,

[1] Session Laws of Tennessee, 1899, p. 963.

to all primaries, and provides that in all cities the primary officers shall be appointed by the chairman of the ward committee; that suitable ballots shall be provided by the party executive committee at least three days prior to the primary election; that each candidate may designate a watcher at the polls; and that offenses against these provisions shall be punishable by confinement in the penitentiary for a term ranging from one to three years.

During the past year there was considerable agitation for a direct primary law. A number of bills have been framed, and there were hopes of having one introduced before the adjournment of the legislature. Whether this was done was not ascertained. Tennessee is still laboring under the handicap of what is called the "Dortch Election Law" which is declared to be "a bastard imitation of the Australian election law, and while it has some features of merit, is a partisan measure." [1] Under the law, the voter is given five minutes to vote. If he fails to prepare and cast his ballot within that time, he is ejected. This practically disfranchises many more or less ignorant voters to whom the law forbids the receiving of assistance, as well as those who through one mishap or another failed to cast their ballot within the time prescribed. With direct primaries yielding generally satisfactory results, and a growing enthusiasm for the direct vote in the ranks of the Republican party of Tennessee, the early enactment of a direct primary law may be looked for in that State.

[1] Correspondence.

West Virginia.

The only primary legislation on record in West Virginia was enacted in 1891,[1] and aims at the protection of direct and indirect primaries in a most rudimentary manner. The act is optional, and merely recognizes primary elections in that it requires "all caucuses, primary elections, or public meetings of any party, for the nomination of candidates to be supported at any state, municipal, county, district, or ward election, or for the selection of delegates to any political convention, or for the appointment of any political committee," to be called by a written or printed notice, specifying that the same is to be held in accordance with the provisions of the act. The power of appointing primary election officers and of prescribing all other regulations not provided for in the act, is reserved to the political party holding the primary election. Hence, beyond the imposition of certain penalties for corrupt practices, and a few general rules governing balloting, this act leaves the vital control of the primaries in the hands of the political parties, although the general election laws are in force as far as applicable.

No direct primaries have as yet been held in West Virginia for the purpose of nominating candidates for state offices, but a majority of counties of the State adopted that mode of electing representatives on their tickets.[2] In this State, as in all the neighboring States, the ferment of corrupt politics is slowly working the masses of the people into a consciousness of the political situation, and is crystallizing public opinion in favor of legislation which will restore to the people their proper influence in government.

[1] Session Laws of West Virginia, 1891, p. 175.

[2] Correspondence M. O. Dawson, Secretary of State of West Virginia.

CHAPTER VI.

DIRECT PRIMARIES WHICH ARE REGULATED LARGELY BY STATUTE.

Indiana.

Indiana placed its first direct primary law upon the statute books of the State this year (1901). The direct vote system has however been in operation for a considerable time in some twelve counties under the regulation of the parties, and was even in its extra-legal form, quite successful. Among the counties in which it has been tried by one party or another—chiefly by the Republican party—are: Henry, Randolph, Clark, Wayne, Hendricks, Fayette, Franklin, Delaware, and Grant. The rules under which direct nominations took place were very few and simple. Since the new law applies only to Marion and Vanderburgh counties, these old party rules are still in force in the other counties. A typical illustration of these regulations may be found in those governing the Republican primaries of Randolph county:

Rule 1. The polls are to be open from seven o'clock in the morning to six o'clock in the afternoon.

Rule 2. The election board is to consist of one inspector, one judge, one sheriff, and two poll clerks, in each voting precinct.

Rule 3. In each township the members of the election board are appointed by the central committee of the precincts, unless this committee chooses to act for itself.

Rule 4. All known Republican voters, and all persons who supported the Republican national ticket in 1896, or in 1900, and who shall declare their allegiance to the Republican party, and all minors who are residents in the county, and who will be voters at the next general election, and who declare themselves to be Republicans, will be entitled to vote at these primaries, and at no others. No proxies are to be allowed.

Rule 5. Tickets are to be of plain white paper, uniform in size and appearance.

Rule 6. Each candidate desiring his name printed on the ticket, shall notify the secretary of the county committee of such desire, at least ten days before the date of the said primary.

Rule 7. For the purpose of liquidating the expense, the county committee assesses and collects from each candidate a reasonable and equitable amount, and the name of no candidate who fails to pay the sum for which he is assessed is placed upon the ballot.

Rule 8. The five members of the county committee, together with the chairman and secretary, shall constitute a canvassing board for the purpose of making the returns. The place and time of meeting are specified.

Rule 9. A plurality vote is sufficient for election.

Rule 10. The returns may be challenged within five days after their publication.

Rule 11. The chairman, secretary, and treasurer of the county committee constitute the board of election commissioners whose duty it is to provide and furnish the several election boards with ballot boxes, booths, tickets, poll books, tally sheets, and all stationery and appliances that may be necessary to carry on the election.

Rule 12. Vacancies on the ticket are filled by the central committee, or by some method which it may provide.

Even under such simple provisions the direct vote plan won great favor in Indiana, and for some time there has been considerable agitation in favor of a law. Many difficulties were encountered in coming to an agreement as to a proper measure. The idea was to have a law which was compulsory on all parties, for direct primaries held at their own expense. Such a law would necessarily work a hardship on a weak party by burdening it with an extra expense. This obstacle was overcome in the law of 1901 by introducing the mandatory feature for all primaries and conventions, but allowing the party committee to decide whether candidates are to be nominated by direct vote, or by convention. In this way minority parties are left free to continue their convention system, subject only to the provisions of the law applying to the election of delegates.

The law as finally passed applies to the Republican and Democratic parties in Marion and Vanderburgh counties for all their primaries and conventions. At least twelve weeks before any election, the chairman of the party committee must give a three days' notice of a primary election for the selection of precinct committeemen, at which the polls are to be open from four o'clock to eight o'clock in the afternoon. The chairman also appoints an election board in each precinct which serves under oath.

Only those persons who at the last election supported the party candidates and affiliated with the party holding the primary, are entitled to vote, with the exception

that a minor come of age may participate. But upon challenge he must make an affidavit that he is a qualified voter and intends to affiliate with the party holding the primary. Any other voter when challenged must make a similar affidavit, and in addition swear that he voted the ticket of the party at the last general election. This provision tends to discourage freedom within party ranks, and disfranchises those who have changed their party affiliations; those who for one reason or other did not vote at all; and those who were naturalized since the last election.[1]

Within ten days after the election of the precinct committmen the outgoing chairman must call them together. They must then organize by electing a chairman, vice chairman, secretary, and treasurer, and after having perfected an organization, must decide whether the party candidates are to be nominated by direct vote or by delegate convention. The new chairman immediately appoints a board of primary election commissioners, consisting of one freehold voter of the party from each ward or township, and the four officers of the new committee. These commissioners act under oath, and have charge of all primaries; decide all contests; prepare the ballots in case of direct nominations; and fix the number of delegates in conventions.

If the direct vote system is adopted, the chairman issues a call for direct primaries at least three weeks before the day fixed therefor. These primaries are conducted as those for the election of precinct committeemen, except that the primary election board is to consist of one inspector, two judges, and two clerks; the

[1] See Part III, ch. IX.

polls open at eleven o'clock in the morning instead of at four o'clock in the afternoon; and two watchers are appointed in each precinct to witness the count. After the closing of the polls the ballots are placed in bags and sealed, and may not be touched except by designated officials. The qualifications of voters and the method of challenging are the same as provided for in case of the election of committeemen. All eligible persons desiring to be candidates must, ten days before the primary, file a written notice with the chairman, or five voters may petition any eligible person upon the ticket. The chairman then turns the notices of candidacy and the petitions received over to the board of primary election commissioners, who group the names under the proper offices and place each group on the ballot in the order in which the notices were filed.

The marking and counting of the ballots is controlled by the general election laws. The tabulation of returns must be begun at least twenty-four hours after the receipt of the certificates of results from the different precincts. Should the party committee decide to hold conventions, then the call for primaries to elect delegates must be issued at least two weeks before the date of the convention. The number of delegates is fixed by the board of primary election commissioners. Any qualified person may be voted for as delegate. The convention must occur within one day after the election of the delegates. All delegates must be elected at such primaries. The rules regulating direct primaries are in force, and the polls are to be open from four o'clock to eight o'clock in the afternoon. The expense is paid out

of party funds. It was estimated that the expense would not be more than it had been, and hence might well be met by the parties just as before. No person is allowed on the primary election board unless he is a qualified voter of the precinct, and a resident freeholder and householder for one year, or a householder for two years. Nor is any person eligible who has entered into a wager on the result of the primary, or who is a candidate, or a close relative of one. The law punishes illegal voting, false affidavits, malfeasance of officers, sale of votes, etc., and requires an itemized statement of a candidate's expense. The adoption of the law by any party in other counties is possible by majority vote of the precinct committeemen, and the filing of a statement of such determination in the circuit court.

It will be seen that the law is largely an incorporation and enlargement of the party primary rules which had already been found fairly satisfactory. It is brief and simple, but every provision is to the point. The provision for a special primary at which precinct committeemen are chosen who are to decide upon the adoption of the direct vote system, is a novel feature. It, however, increases the duties of the voter and adds to the expense of the party. Under a compulsory law party officers might be chosen simultaneously with the candidates. The question of expense ought not to stand in the way of a compulsory law, for it is but fair and just to all parties to give them the advantage of a good system operated at the public expense. This proposition can be defended on the same principles as was the institution of the Australian ballot system at public expense.

Kentucky.

Kentucky is one of the leading States that have become well known for their systems of direct nomination. The first step in this direction was taken in 1880, when an imperfect law was passed which provided for optional primaries, and applied to the counties of Harrison, Bourbon, Campbell, and Kenton.[1] The statute prescribed few positive regulations for the conduct of the primaries, but delegated that power to the political parties. The party committee was to decide by a majority vote upon the holding of primaries. It determined the time, place, and manner of holding the primaries, appointed the officers, and prescribed the qualifications for voting supplementary to the general election requirements. All of these facts were to be set forth in the call for a primary. The primary election officers were to act under oath, and were to be penalized for refusing legal votes, or accepting illegal votes. The poll books were to be preserved for two years, and penalties were imposed for false certifications, alterations, erasures, changes, and defacements of ballots, and for the use of undue influence in voting, or for participation in bets or wagers. The weakness of this law lay in the fact that it left the direct primary almost entirely an extra-legal institution, subject to the prejudices and passions of party men, and dependent in its conduct upon the wishes of a party committee which might be governed in its action by private interests and personal ambitions.

The present system is, however, a great improvement upon the original one. The law upon which it is based

[1] Session Laws of Kentucky, 1880, p. 469.

was passed in 1892.[1] It is incomplete and resembles the southern laws in that it is optional and authorizes the political parties to prescribe many of the important rules for the conduct of the primary elections. Whenever the committee or governing authority of the political party desires to hold a primary election under the provisions of this act, it must give forty days' notice, and must designate the time, place, and offices for which nominations are to be made. All legal voters eligible to vote under the general election laws may participate in the primary, subject to such additional qualifications as the party executive committee may prescribe. A declaration of party affiliation is required. The registration laws of Kentucky do not apply to the entire State, but where registration is required, a separate column headed "Party Affiliation" is set off in the registration books, and every voter presenting himself for registration is asked the question: "What political party do you desire to affiliate with?" If he refuses to answer, he may not vote at the primary election. Where registration is not required, the party may prescribe all conditions and qualifications for voting. This feature of party enrollment or registration of party affiliation is regarded as one of the most successful provisions of the Kentucky law, and while severe adverse criticisms have been passed regarding the Kentucky direct primaries, this one provision has generally commended itself very favorably. However, some authorities believe that this requirement of the law would not work in many other States, such as New York and Massachusetts, where citizens would not want to be quizzed publicly as to their

[1] Session Laws of Kentucky, 1892, p. 106.

party affiliations two or three days before they voted.[1] The primary election officers are to be appointed by the governing authority of the party from lists submitted by the different candidates among whom they shall be divided as equally as possible. The name of any candidate may be placed upon the ballot by giving fifteen days' notice to the party committee, and upon complying with the conditions prescribed by the committee. Voters are allowed to cast their ballots for candidates whose names do not appear on the ballot. The expense is borne by the party, which prints all the ballots, subject to the regulations of the general election laws.

It will be seen that some of the most vital features of the system are left to the discretion of the party committee. Here lies the weakness of the Kentucky plan. It permits the sacrifice of justice, through personal and partisan prejudices and preferences. The committee is allowed to fix the date of the primary; to prescribe rules for the participation of voters in primaries outside of cities and towns where registration laws do not apply; to prescribe the form of a test, and any other qualifications for participation in cities and towns; to appoint primary election officers from lists submitted by the candidates; to make rules for the submission of the names of candidates; and to assess candidates for the defrayal of the expense incurred by the primaries.

Numerous difficulties have arisen because of these extra-legal party powers, but it must be said in favor of the Kentucky system, that, in spite of all objections, the

[1] Report of National Primary Election League Conference of New York, 1898, p. 118. Moreover, in Massachusetts registration is required only once in ten years. In New York secret enrollment is provided for. See p. 112.

direct primary has undoubtedly proven itself an excellent means for ascertaining the real preferences of the party, and for enabling candidates to make a fair race and to win when worthy of success. The following changes may be suggested for the improvement of the Kentucky law.[1] It ought to apply to congressional elections. The time for holding the primary, which can at present be fixed by the committee on partisan grounds, ought to be determined by law, and ought to be set at about sixty days before a general election. Under the present system, if a new registration has not already been made before a primary election, the registration lists of the previous year govern. This permits persons who have lost their legal residence, and who cannot vote at general elections, to vote at the primaries; while persons who have died, or who have moved far away, may be personated by bribe-takers. The registration laws ought to be changed so as to provide for registration about sixty days before the general election, so that the primaries might be held concurrent with the registration, thereby increasing the vote polled, reducing the expense, and avoiding the difficulties just mentioned. The registration officers ought to be appointed by the county judge and some other important officer or prominent person of opposite political faith than the county judge, out of the ranks of the two main political parties. Instead of having the officers of the primary appointed by the party

[1] In a most able address before the National Conference on Primary Reform held in New York in 1898, Hon. Edward J. McDermott briefly explained the defects of the Kentucky system, and made suggestions for changes and modifications. Coming, as his words do, from a resident of that State, who is highly interested in matters of primary reform, they are worthy of thoughtful consideration, and are summarized above.

committee, they ought to be selected by lot from among lists submitted by the candidates, and should be compelled to serve. Their names ought to be published about a month before the primary, so that substitutions for unfit men might be made by the candidates.[1]

Every important candidate ought to be given the right to have an agent or representative in each precinct. This is urged as a very essential change. The objection that there would be too many persons around the officers is discredited. It is claimed that candidates for small offices, who are in no fear of the officers because of friendship or identity of interest, and candidates who have no opposition, or who have no doubt of a big majority, will not take the great labor and bear the heavy expense incident to the procurement of such an army of intelligent, faithful inspectors, or will place them only in corrupt or hostile precincts. In Louisville candidates had such a right for five or six years, and there was no crowd of watchers anywhere at any time, it appears.

The expense of the primary may at present be divided unfairly between the candidates, or it may be excessive. In some cases leading candidates were assessed as high as five hundred dollars. It ought to be reduced by holding primaries on registration day, and by using the voting booths, ballot boxes, voting places, and other general election paraphernalia at the primaries. This would reduce the assessments considerably, in case they should be continued, although preferably the expense ought to

[1] This plan might be very successful, but a simple method suggests itself by having the general election officers act under regular pay at the concurrent primaries of all parties.

be public, thereby relieving the candidate of any possible temptation to reimburse himself by corrupt means when in office, should he be successful. The tendency would be, in case of assessments, for the expense sooner or later to come out of the pockets of the tax-payers. The canvass of the votes, and the decision of contested cases, ought to be taken out of the hands of the party committees, and made the duty of the same state and county officers who perform those services at regular elections, and should take place in the presence of the candidates or their representatives, or be made entirely public. The ballots should be printed, furnished, and preserved as in case of general elections.

From the preceding it will probably be plain that the Kentucky system presents numerous opportunities for improvement. Its provisions are such that the principle of direct nominations by no means is given a fair test. Yet, it must be said to the great credit of the direct vote scheme of nomination, that "in spite of all objections to the present system, the primary is undoubtedly the best means for ascertaining the real preferences of the party, and for enabling independent candidates to make a fair race and to win when worthy of success." [1] At no time was the fact probably better demonstrated than at the Democratic primaries held in July of the present year. The results were most gratifying throughout. "It was the fairest and most orderly primary ever held in Louisville." A large vote was polled. Those candidates who were defeated accepted the result as a fair and full expression of popular opinion, and many publicly declared

[1] McDermott, before National Conference on Primary Election Reform, New York, 1898.

themselves as ready to support their successful rivals to the utmost. The Democrats seem to feel that the fair manner in which the primary was conducted will, in a good measure, help their ticket at the coming general election.

Missouri.

There has been considerable legislation upon the subject of primary elections in Missouri. Laws were passed in 1889, 1891, 1893, 1897, and 1901. The first act, passed in 1889,[1] was very rudimentary in character. It did little more than legalize the method of direct nomination by requiring an oath from all primary election officers that they would faithfully execute their duties as laid down in the rules of their party. Penalties were imposed for disqualified voting, for voting at more than one place, for procuring illegal votes, and for making fraudulent returns.

The act of 1891 left less to be regulated by the political party.[2] It was compulsory for all primary elections held by any political party having polled at least one-fourth of the total vote cast at the last preceding general election, for the purpose of nominating candidates or electing delegates in cities of 300,000 inhabitants or over. This limited the operation of the act to St. Louis. Proper notices of the time, place, and manner of holding the primary election had to be given by the political parties, or in case of their failure to do so, by the "recorder of voters" at least one week prior to the holding of the primary election. An opportunity was given for

[1] Session Laws of Missouri, 1889, p. 111.
[2] Session Laws of Missouri, 1891, p. 136.

independent movements by allowing any number of qualified voters of a ward above twenty, upon petition, and upon the deposit of fifty dollars, "to have placed upon the ballot a delegation selected by them." The primary election officers were selected by the "recorder of voters," from lists of five submitted by each delegation, and received five dollars for their services. As in the southern States, the expense of the primary was met by an assessment of the candidates, but instead of leaving the amount of each individual assessment to be determined by the party, as is the case in the South, a definite sum of ten dollars was required from each candidate. In case a surplus remained it was to be turned into the treasury of the school board. The polls were to be open from one o'clock to eight o'clock in the afternoon. All other regulations were prescribed by the party.

The act of 1893 was amendatory in character and extended the notice of the primary election from one week to ten days.[1] It also required the primary elections to be held at least thirty-five, instead of thirty days, before the general election. The salary of the primary election officers was reduced from five dollars to three dollars. The most important clause of this act was the one which provided that the act of 1891 was to apply to all cities of 100,000 inhabitants and over, instead of 300,000 and over. In 1897 another amendment[2] was passed repealing the preceding acts as far as they applied to cities of 300,000 and over, and substituting new regulations for the conduct of primaries in cities of that size. It provided for the holding of the primary under

[1] Session Laws of Missouri, 1893, p. 165.
[2] Session Laws of Missouri, 1897, p. 117.

regular election machinery, with regular judges and clerks, and with the safeguards of the regular election law. Another important change from the act of 1891 was the requirement of a declaration of party affiliation. This, it was claimed, was necessary to preserve the integrity of the parties, and to prevent the fraudulent participation of voters of opposite parties for the nomination of weak candidates in each other's ranks. Candidates were given the right to appoint watchers at the polls. The expense was to be met as under the act of 1891, except that in presenting a new delegation by petition, ten dollars were to be paid for each district represented, instead of a lump sum of fifty dollars. In case of a surplus, this was to be refunded to the individuals who had deposited the same, or to their legal representatives. Because of the provision that the expense was to be met by the political parties, the Missouri law was practically inoperative, though nominally compulsory, for there is no way of compelling a political party to put up the requisite sum of money, and "machines" are not particularly fond of contributing funds to a reform movement which would perhaps accomplish their overthrow.

A solution of this difficulty seems to have been achieved by the Missouri legislature, during its last session when it passed two primary election laws and amended the registration laws. One primary election law applies to cities of 300,000 inhabitants and over.[1] It is compulsory on all parties which cast at least 10,000 votes for governor or supreme judge at the last election,

[1] Session Laws of Missouri, 1901, p. 149.

but makes the adoption of the direct vote system of nomination optional with the parties. It concerns itself with four general subjects, and resembles in this respect the New York law of 1899: Registration; the conduct of primary elections; the conduct of conventions; and the selection of party committeemen.

Registration is required for participation in the primary, in addition to a declaration of party affiliation upon challenge, but no primary election may be held on any registration day or within five days before or after. The primary elections of the different parties occur on different days which are determined by the party committees. The polls are to be open from one o'clock to eight o'clock in the afternoon. All polling places are provided at the public expense, while the salaries of judges and clerks are paid out of fees of twenty dollars required in case of the filing of lists of delegates, or by assessment in case of direct nomination. Each "delegation" or set of delegates when filed must be endorsed by at least twenty qualified electors, and may be accompanied by a list of six names of qualified electors within a district. From all lists thus submitted the primary election officers are to be chosen.

If the party committee decides to nominate public officers by direct vote, then the candidates are required to file petitions signed by one hundred names in case of city offices, and by twenty-five names for districts in the city. The expense of polling places is met by the party, as in case of primaries for the election of delegates, but the salaries of the primary election officers must be paid by the candidates through assessments by the party committee. The primary election officers are

selected by the election commissioners from lists submitted by the party committeemen. Voters,if challenged, must make affidavit respecting their name, residence, and party. Watchers are appointed by the party authorities.

Provision is made for the maintenance of a popular party organization through the compulsory biennial election of committeemen at the primaries. Special primaries may be called by the parties at their own expense prior to the first official primaries for the selection of party officers. In this respect the Missouri law resembles that of Indiana which was passed last year. An excellent opportunity is afforded by this provision for the adoption of the direct vote system through the instruction of the newly-chosen party committeemen. Where conventions are held, their conduct is regulated in some detail by the law, while penalties are imposed for corrupt practices. The other primary election law passed during the year 1901 applies to cities of 175,000, and less than 300,000 inhabitants.[1] It is compulsory and merely regulates party action in the selection of delegates to conventions. Through an amendment of the registration laws, registration is introduced into cities of 100,000 and less than 300,000 inhabitants.[2]

[1] Session Laws of Missouri, 1901, p. 165.

[2] Session Laws of Missouri, 1901, p. 170. An amendment was also passed empowering the city to pay the salaries for judges and clerks of elections, and members of registration boards for the preceding year, which had remained unpaid.

CHAPTER VII.

IMPERFECT DIRECT PRIMARY LAWS AND PARTY SYSTEMS WEST OF THE MISSISSIPPI.

North Dakota.

No primary election law has as yet been enacted in North Dakota, although a vigorous but vain attempt was made in this direction at the last session of the legislature. The sentiment in favor of a good law is strong, but here, as in so many other States, "machine" opposition has defeated all efforts to enact such a law. The original North Dakota bill bore a close resemblance to the Wisconsin bill. It included nominations for members of congress, state officers, county and city officers, presidential electors, judges of the supreme and district courts, and members of the legislative assembly.[1] "Machine" opposition, however, first forced a compromise measure, and then "killed" the compromise.

[1] As returned from the committee rooms and presented to the legislature the bill was compulsory, and provided for primary elections in each county of the State for the nomination of candidates for county offices, and members of the legislative assembly. Special regulations were to govern nominations in case of city and ward offices, provided the cities contained at least 2,000 inhabitants. All cities of a smaller size were not to be subject to the law. Nor were any parties which had cast less than 5 per cent. of the total vote for governor at the last preceding election, to be governed by the act. Candidates were to file nomination papers containing a number of signatures of qualified electors proportionate to the importance of the office. The expense was to be met by an assessment of each candidate to the extent of 2 1-2 per cent. of his salary, with the exception of county constables, and justices of the peace, who were to pay the nominal sum of one dollar. The promulgation of the party platform was left to the state central committee as in case of the amended Stevens bill of Wisconsin.

South Dakota.

No law has as yet been enacted in South Dakota establishing direct primaries. However, the majority party (Republican) has made use of the direct nomination plan in some of the counties of the State, such as Hughes and Hyde. It seems to have worked very satisfactorily for the nomination of county officers, and according to the opinions expressed by some of the most prominent members of the party, there is little objection to the nomination of legislative officers as well. But for choosing delegates to state and to judicial circuit conventions, many regard it with disfavor, because these conventions are held considerably earlier than the opening of the local canvass, hence necessitating the calling of two primary elections within a year.

The argument of the domination of the country vote by the city vote is also advanced in South Dakota against the proposition of continuing under the present plan of including the direct choice of delegates for state and judicial circuit conventions. It is held that "two or three large precincts can club together, select delegates to suit, and elect them, while the rural precincts cannot get together as well on this proposition, and generally, let the one ticket go through by default." This is the way a prominent politician puts it. But he adds that in spite of these objectionable features, sufficient support cannot be found for the abolition of the system. At three successive biennial canvasses a vote was taken and resulted largely against a change. The fact that under the direct nomination plan the opportunities for corruption are greatly reduced because of the necessity of buying up a

large number of voters, seems to have been clearly demonstrated in South Dakota, and has frequently been the subject of favorable commendation by the local press. It is generally conceded that the plan resulted in the nomination of better men. But this is claimed to have been partly offset by the "bunching of candidates" in certain localities where the population centered, and where many of the most popular men resided. It may be said that the experience with direct primaries in South Dakota, while it did not prove an unqualified success, nevertheless sufficiently demonstrated the strong points of the system to win many active supporters who at present are agitating in favor of a general law extending the system throughout the State. Such an attempt was made several years ago, but it failed because of violent opposition from the "machine."

Colorado.

Colorado has no direct primary law, but it legalizes primary elections in a statute[1] by which it extends its corrupt practices act "to any caucus, convention, or primary election, held for the purpose of nominating public officers," or to any "caucus, convention, or primary election held for the purpose of choosing delegates to any convention to nominate," etc. In several counties of the State direct nominations appear to have been tried, but without any legal regulation or authority. That a growing sentiment prevails in favor of legislation on this subject, was demonstrated during the present year, when a bill was introduced aiming at the abolition of the convention system for the nomination of county officers.

[1] Session Laws of Colorado, 1887, p. 347.

Iowa.

Iowa has no direct primary law; however, systems of direct nomination have been in operation in several counties of the State for many years. It was not until 1898 that any legislation bearing upon primary elections was enacted in this State.[1] The act of this year is extremely rudimentary. It merely prohibits illegal voting at a "primary election for the nomination of officers or for the selection of delegates to conventions," and makes participation in two primaries unlawful. The law, hence, does no more than recognize direct nominations without in any way interfering with their conduct by the political parties.

Kansas.

Some writers claim for Kansas the distinction of having inaugurated the first direct vote system. The present research has not borne out this contention, but the writer is ready to say that in Jackson county, Kansas, there has been in operation for nineteen years, a most unique system of nomination, unlike all others used in this country, and most fruitful of success throughout the entire period of its long trial. This system, which is known as the "representative vote system of direct nomination," is entirely extra-legal in its operation.[2] The primary election law passed in 1897 does not deal with direct primaries of any kind, but merely

[1] Session Laws of Iowa, 1898, p. 59.

[2] It was framed by John L. Hopkins, a resident of Holton City in Jackson county, and has been in continuous operation, with one exception, since 1877. For a clear and strong exposition of the plan supplementary to what is given here, see the originator's article in the Arena, June, 1898.

legalizes "primary assemblages" for the nomination of officers, or for the selection of delegates. It is optional, and leaves the entire conduct of the primaries to the political parties.

The Jackson county scheme was adopted by common consent of all the members of the Republican party for the nomination of all county, city, and township officers. Its details are not confusing, and are worthy of a thorough explanation. Each precinct is entitled to a certain number of representative votes, proportioned in accordance with the vote cast at the last preceding general election. If, for example, one representative vote for every ten votes cast is the basis of apportionment, then a precinct having cast one hundred votes is entitled to ten representative votes, and one having cast one hundred and twenty votes, is entitled to twelve representative votes. These representative votes are divided among the different candidates upon the basis of their share of the total vote cast in that precinct *at the primary.* If in a precinct entitled to eight representative votes, a full vote of eighty is polled out of which A gets 20 votes, B 40 votes, and C 20 votes, then A's share of the representative vote is 20-80 of eight, or two representative votes; B's, 40-80 of eight, or four; and C's 20-80 of eight, or two.

The candidate receiving the highest number of *representative votes* in all the precincts receives the nomination, and not the one receiving the greatest number of direct votes, although, usually, the latter is also true. It is not true in the extreme instance of a village and of a country precinct, having representative votes of 9 and 8 respectively. A carries the village precinct by 60

votes to B's 30, giving them 6 and 3 representative votes respectively. B carries the country precinct, in which for one reason or another, only 56 of its total 80 votes were polled, by a vote of 40 to A's 14, entitling him to 6 representative votes and A to 2, thus giving B, who received a total of only 72 votes, the nomination over A by one representative vote, although A received a total of 74 votes.

This system which, *prima facie,* appears somewhat involved, is really very simple, although computation in decimals is necessary to get at the result. Its success was almost unqualified, and the interest taken in the primaries is a strong argument in its favor. At the primary election held July 13, 1895, the greatest number of votes cast for a candidate was 1931, while at the general election which followed only *twenty* votes more were cast. By making the vote cast at the last preceding general election the basis for apportionment, fraud is prevented, for the results of the election being known, as well as the number of votes required for one representative vote, everybody can figure out for himself the number of representative votes to which a precinct is entitled. It is in general, also, a just method for the country, although it may happen that bad weather, or the bolting of the party at the general election, may result in the polling of a slight party vote, and thereby reduce the number of representative votes to which the country districts are entitled at the next primary election. In this way temporary dissatisfaction with the party, or an independent movement, may sadly reduce the local strength of a party when the next nominations are made. On the other hand, it tends to encourage attendance at

the polls in rural districts on general election day. It protects the country precincts by giving them the advantage of an unpolled vote, though experience has shown that the interest in the primary is so general as practically to call out the full general vote.

Under this system the weakest candidate all around is bound to fail, while the strongest candidate all around, wins. Local favoritism or prejudice cannot seriously affect the candidates. From this it follows that only good, strong, and popular men who see the chances of winning, will run, while "local candidates," and the "straw candidates" put up by the "machine" to scatter votes, will not be of much use, and will drop away. Hence, there will be a tendency towards the reduction of the number of poor candidates in the field, and the encouragement of competent men.

Party harmony is strengthened, since every candidate is given full credit for his share of representative votes in all the precincts, and if he loses, he feels that the fight was free-for-all, fair, and square, and went to the most generally desired man, with whom he is willing to shake hands, and whom he is ready to aid at the election. Moreover, party factions are compelled to fight it out independently in their own precincts, thus reducing the possibility of embroiling the whole party. Partisanship and faith in party candidates will be strengthened, in that manipulations by professional politicians are made far more difficult through the necessity of extending their operations over a wide area, and instituting separate schemes and plots in the different precincts. The people will feel that the men chosen are not the creatures of a "machine," but are "of their own blood." For

similar reasons, also, "trading,"—that fruitful source of perverted representation, is practically made impossible. Every candidate needs all the votes he can get in all the precincts in order to win out. Independent "trades" in each precinct will be necessary in order to accomplish anything, and it will be difficult, in the first place, to find the proper parties for a "trade," and then to "trade" in a sufficient number of precincts to carry the nomination.

It must not be presumed that the advantages which have been enumerated here, are peculiar to the Kansas plan alone. They manifest themselves under the plain direct vote system, but the Kansas method, because of its exceptional fairness to all districts, whether urban or rural, and because of the special incentive to a full, untraded, uncorrupted vote, tends to emphasize the strong features which are common to direct primaries. The pronounced success of the Kansas scheme where tested for nearly a score of years, is sufficient to recommend it for thoughtful consideration by those who have the welfare of good government at heart. No good reason seems to exist why this plan should not operate successfully in many other States, and the writer would not be at all surprised, if the Kansas representative vote system of direct nomination should some day find a complete incorporation in a comprehensive direct primary law.

Nebraska.

The first law recognizing direct primaries in Nebraska was placed upon the statute books in 1887.[1] It legalizes primary elections for direct nomination, and re-

[1] Session Laws of Nebraska, 1887, p. 454.

quires voters to swear that they have not participated in any other primary. Since the important features of this law were re-enacted in 1899, it is unnecessary to state them here. The law of 1899[1] is optional, and more complete than either the Tennessee, Utah, South Carolina, or Alabama laws. Important positive rules restrict the freedom of party regulation, and place the primary elections largely upon a legal footing. In Nebraska nominations may be made by convention, by committee, by primary meeting, by direct primary, or by petition. The general election laws are extended to the direct and indirect primaries as far as possible. Twenty days' notice of a primary is required. All persons who are legal voters have the right to participate in the primary election, subject to such additional qualifications as the party authorities may prescribe. In order to prevent any but those affiliating with and being actual members of any political party from participating in the primary of the party, a system of registration is provided, under which a declaration of party affiliation is required.

The Nebraska law provides for three registration days, the Thursday of the third, the Friday of the second, and the Saturday of the first week preceding the general election, and if any party desires to hold a primary previous to any of these days, the registration for the previous year governs. The primary election officers are selected from lists furnished by the respective candidates to the committee, or governing authority, and are divided as equally as possible among the various candidates. The duties of these officers are fixed in some detail by law, and they are made responsible through an oath. The expense is met by the party.

[1] Session Laws of Nebraska, 1899, p. 134.

Nominations by direct vote have been given a valuable local test in the city of Lincoln, where a direct vote system has been used by the Republican party for making nominations to city offices since 1896. As a protection against nomination by a small minority, majority nominations are required, and second primaries held if necessary. All "persons who are qualified voters and who are members of the Republican party, and affiliated with such party, and voted the Republican ticket at the last general election, have the right to vote at the primaries, and the voters challenged may vote upon their taking the oath as to their qualifications, as herein specified." This simple provision seems to have operated quite successfully in that members of opposite political parties did not participate to any material extent in each other's primaries. However, this test appears to contain an element of unconstitutionality in that it disfranchises the following classes of voters from participating in the primary: (1) Voters come of age since the last election; (2) voters naturalized during the last year; (3) all qualified voters who failed to cast a ballot at the last election; (4) all voters who changed their party affiliations since the last election. Although the Lincoln system operates under very simple rules, it seems to have been generally successful. "Its expense has been considerable to the city and to the candidates, but the people are well satisfied." [1]

Arkansas.

In Arkansas the direct primary has enjoyed an extended local application, most of the counties of the State making this method their regular means of nomi-

[1] Correspondence, Secretary of State Weesner.

nation. No compulsory law has as yet been enacted for their regulation. However, the statute books of the State contain a law which dates back to 1895,[1] and is in force only when the parties decide to hold their primaries subject to it. It provides that whenever any political party in the State by direct primary nominates any persons to become candidates, at any general or special election, or before the legislature for United States senator, or for congress, or any legislative, judicial, state, district, county, township, or municipal office, such nomination shall be legal. In order to enjoy the benefits of the law, it is necessary for the party committee to file a certificate with the county clerk at least twenty days before the primary election to the effect that the party desires to adopt the law. As in case of all the southern States the conduct of the primary is left largely to the political parties. However, the judges and clerks must have the same qualifications as those which are required for general election officers; they must be of the same party, and must act under oath. For participation in the primary election, general election qualifications are required outside of those imposed by the authority of the party which conducts the primary.

Utah.

In Utah an optional act was passed in 1899 providing for the holding of direct primaries, and for the punishment of offenses committed at the same.[2] The law is an almost exact duplicate of the Nebraska law

[1] Session Laws of Arkansas, 1895, p. 240.
[2] Session Laws of Utah, 1899, p. 118.

of 1899, and hence need not be reviewed here. Although Utah has had this law upon her statute books for twelve years, no political party ever availed itself of the opportunity of holding direct primaries.[1] However, there is great dissatisfaction with the present state of things, and a bill was introduced into the legislature at its last session looking towards the institution of a complete and effective system of direct nomination. At the recent election an amendment to the Constitution was adopted in regard to the referendum, and there will be legislation along this line, although some of the legislators aim to get around this by adopting the direct vote plan of nomination.[2]

Nevada.

Direct primary legislation in Nevada dates from 1883.[3] The act of this year bears a strong resemblance to the Louisiana act of 1900, which appears to be a copy of it. It leaves the holding of direct primaries optional with the political parties, but requires that when the party committee makes a call, it shall adopt a resolution setting forth the time and place; the names of the primary officers; the object of the election; and the qualifications required in addition to those prescribed by the election laws of the State. A copy of this resolution is to be contained in the notice. The "primary election board" must be composed of legal voters. The duties of this board are defined at considerable length. Corrupt

[1] Correspondence, Secretary of State, James D. Hammond.
[2] Correspondence, Paul C. Thom, Attorney General, Utah.
[3] Session Laws of Nevada, 1883, p. 28.

practices are penalized. All else is left to the political parties. The Nevada and Utah acts may be set down as belonging to the southern type of primary laws in that they are optional, and legalize systems of direct nomination, which through the absence of important positive legal provisions are to be largely constructed by the political parties that may choose to adopt them.

CHAPTER VIII.

THE PRIMARY ELECTION OF DELEGATES TO CONVENTIONS UNDER COMPULSORY LAWS.

California.

California is noted for persistent efforts at primary reform. Probably more severe and long drawn struggles for better regulated primaries have been fought out in this State than in any other. The contest has, however, not been for direct nomination by the voters at primaries, but for better methods of electing delegates to conventions. Ever since the days of "Boss" Felton there has been constant thinking, discussion, and agitation for an improvement of "boss-ridden" primaries and conventions. Corruption, in its most aggravating form, early infested California politics. The state government was from its origin in the hands of politicians "who devoured the vitals of the Commonwealth and consumed the substance of the people." [1]

The first primary election law enacted in this State, and, indeed, the first primary law of any kind to be enacted in this country, was wrung from a clique of politicians after a desperate struggle in 1886.[2] It was shortly before the general election held September 6, 1865, that the "bold and unblushing attempt to sell the city of San Francisco" was made by Felton, the "boss"

[1] San Francisco Bulletin, September 2, 1865.

[2] For a vivid account, see the San Francisco Bulletin for August and September, 1865.

of the Union party, who, "through his management politically, and through the courts, had fastened upon the taxpayers of San Francisco a debt of more than $1,000,000, pocketing as his fee more than a quarter of a million," and then going into the primaries and elections, and "by the expenditure of this very money procuring the election of delegates bound to the nomination of such persons to the legislature as would assist in his election to the United States Senate." [1]

The attempt was so bold and "so astoundingly audacious and impudent," that opposition at once developed in the form of an Independent Union party representing some seven thousand votes. Delegates were chosen and when they met, Felton's agents strove with every form of bribery that ingenuity could invent, to break down the convention. They failed, though not completely. During the progress of the convention a resolution was offered providing for "a vote upon the question of continuing or abolishing the primaries." [2] But the "machine" prevented it from being "reached" in time to be acted upon. Though this effort failed, it was well prophesied that "the next legislature would insist upon nominations by the voice of the people through petition, or by any other means."

Public sentiment was pronounced in favor of primary reform, and when the legislature met in 1866, though the "machine" had succeeded in defeating some of the most enthusiastic reform candidates, it was felt that something had to be done. The result was the enactment

[1] San Francisco Bulletin, September 4, 1865.
[2] San Francisco Weekly Bulletin, August 26, 1865.

of the first caucus or primary election law in the country.[1] It was optional and provided for the proper publication of notices, giving the time, place, and manner of holding the primary; the authority which called it; and the qualifications for voting. All officers were to act under oath. Challenges were allowed, and penalties for corrupt practices, imposed.

This meager legal setting but slightly checked the increasing corruption of the primaries. However, nominations continued to be made under the law for about thirty years. In the course of this period, which marked a tremendous development of industry and wealth throughout the State, "machine" politics rapidly grew more dominant. Bossism riveted itself more firmly upon the party organization. The delegate convention system became a sham of democracy. The "popular" primaries grew into hollow mockeries of republican government. Suffrage lost its power and significance, and under the skillful organization and corrupt machinations of professional politicians, tended to narrow itself down to small cliques of men in whose hands it operated as a most powerful means to selfish ends.

That a reaction should follow this growing domination of "machine" politics is but natural. The evils of bad government grew so glaring, and the pernicious results of continued mismanagement by public officials were so widespread and unbearable, that even the most indifferent citizens could not but waken to the deplorable condition into which the governments of the Commonwealth and of the larger cities, were fast sinking. Al-

[1] Session Laws of California, 1866, p. 483.

though many reformers, with increasing activity, had been disseminating ideas for the improvement of the nominating machinery throughout the State ever since their first success in 1866, politicians, strengthened by an indifferent public sentiment, were able to frustrate all efforts for more than a quarter of a century.

It was not until 1895 that further tangible results were achieved in the way of primary legislation in California. This year opened up a new era of reform. The condition of the primaries and conventions demanded immediate and drastic measures. But if politicians had thwarted efforts at reform before 1895 the courts proved themselves stumbling blocks from then on. Constitutional difficulties immediately rose, and there followed in rapid succession the laws of 1895,[1] 1897,[2] 1899,[3] and 1901.[4] When one had been struck down by the courts, another followed at the next session of the legislature, until finally all difficulties were removed through the amendment of the Constitution in 1899. The law which is now in force was passed at the last session of the legislature and will be discussed at length, while the three preceding acts will be treated only to the extent of a general comparison in order to bring out their important differences and resemblances, most of which are due to the attempts on part of the succeeding legislatures to meet the decisions of the courts.

All three laws of 1895, 1897, and 1899, which regulated the election of delegates to conventions, were

[1] Session Laws of California, 1895, p. 208.
[2] Session Laws of California, 1897, p. 115.
[3] Session Laws of California, 1899, p. 47.
[4] Session Laws of California, 1901, p. 606.

compulsory, and provided for primaries to be held at the public expense. Concurrent primaries, or primaries participated in by all parties on the same day and at the same polling booths, were established. Only one ballot box was to be used. But the laws of 1895 and 1897 provided for separate and colored ballots for the different parties, while the 1899 law, permitting, as it did, the voter to vote the ticket of any party, required only one ballot for all parties. The law of 1895 applied only to counties of the first and second class, and upon this ground was declared unconstitutional as being "local and special" in character.[1] As a result the law of 1897 was extended to the entire State, but a new feature was introduced in the form of a test for participation in the primary under which the voter was required to declare his present intention of supporting the candidates of the party at the next election. The court did not pass judgment upon the power of the legislature to prescribe such a test, but contented itself by merely pointing out the grave dangers incident to the exercise of such a power, and then declared the law unconstitutional upon the ground that it was special legislation, and discriminated in favor of and against certain classes of persons.

Then came the law of 1899, which, like its predecessor, was compulsory throughout the entire State, and sought to eliminate the unconstitutional features of the law of 1897 by avoiding conflict with those specific provisions of the Constitution which had created the difficulty with the preceding act. It also abolished the

[1] For a detailed discussion of the question of constitutionality, see Part III, chapter X.

declaration of party affiliation, and permitted each and every voter to vote the ballot of any party, provided he had been duly registered. In this respect it was a return to the law of 1895. But the supreme court a third time decided adversely. The difficulty now was that the "open primary" system[2] afforded no protection whatever to party organizations, and hence interfered with the voter's right to nominate through the medium of his own party; and that the law discriminated against parties having cast less than three per cent. of the total vote at the last election, by preventing them from holding primaries under its protection and regulation.

The legislature now had but two alternatives, to give up the idea of passing any law, or to amend the Constitution. It adopted the latter course, and in 1899 passed an amendment which completely removed all difficulties. The chances of the law of 1901 to pass the supreme court in safety are very good considering the completeness with which this amendment covers the unconstitutional difficulties raised against the preceding acts. The amendment reads as follows: "The legislature shall have the power to enact laws relative to the election of delegates to conventions of political parties at elections known and designated as primary elections." This limits the power to legislate respecting primaries held for the election of delegates, and not for the nomination of candidates. Should the legislature desire to establish direct primaries for nominations to office, it would raise the question of the necessity of amending the Constitution again, or of letting the law run its chances with the courts.

[1] See Part III, ch. IX.

The legislature shall also have the power: "To determine the tests and conditions upon which electors, political parties, or organizations of voters, may participate in any such primary election, which tests or conditions may be different from the tests and conditions required and permitted at other elections authorized by law." Three difficulties are here removed: (1) That of the power of imposing a test; (2) that of determining the strength of party requisite for participation in the primary as a party; (3) and that of a conflict with the provisions of the Constitution respecting "other elections authorized by law." "Or the legislature may delegate the power to determine such tests or conditions at primary elections to the various political parties participating therein." This leaves an opening for the trial of a party test which was decided to be the only constitutional form of test in one of the decisions of the supreme court.[1]

"It shall be lawful for the legislature to prescribe that any such primary election law be obligatory and mandatory in any city, or in any city or county, or in any county, or in any political subdivision of a designated population, and that such law shall be optional in any city, city and county, or political subdivision of a lesser population, and for such purpose such law may declare the population of any city, city and county, county, or political subdivision, and may also provide what, if any, compensation primary election officers in defined places, or political subdivisions, may receive without making compensation either general or uniform." This

[1] See Part III, ch. X.

disposes of the objection of "local or special legislation," and of the right to compensate public officers upon a basis other than that already provided by the Constitution.

The legislature clothed with this new power was no longer forced to legislate to suit the courts, but was enabled to enact legislation in accordance with its own notions. The result was a new law which is mandatory in cities, and in cities and counties, having a population of over 7,500, and hence applies to the city and county of San Francisco, and the cities of Oakland, Sacramento, San Jose, San Diego, Los Angeles, Stockton, Alameda, Berkely, Fresno, Pasadena, and Vallejo. In other parts of the State it may be adopted by the majority vote, upon the submission of the question to the electors through petition of a number of voters equal to one-half of the total vote cast in the last general election. It may be rendered inapplicable by a similar vote.

The general election laws are extended to the direct primary as far as applicable. The conduct of the primaries is to resemble that of other elections, with the exception that but one ballot box is to be used at each polling place; that the primary officers, consisting of an inspector, two judges, two clerks, and one ballot clerk, shall receive a compensation of two dollars; and that there shall be no more ballots printed than there are names upon the registry book. Only those political parties which cast at least three per cent. of the entire vote polled at the last preceding election, are allowed to participate, although an opportunity is given for the organization of new parties by permitting a political party to participate upon the presentation of a petition con-

taining a number of signatures equal to at least three per cent. of the total vote cast at the last election.

Every qualified party must, at least forty days before the primary, file a writing known as a "petition," with the secretary of state in case of a state or district primary, duly authenticating the party, and declaring that it is the intention of the party to hold a state or district convention for the nomination of certain specified officers, or for the purpose of filling a vacancy, and requesting that a place be given to it upon the primary election ballot. Similar petitions must be made by the parties in case of lower conventions, and filed with the proper officers at least thirty days before the primary. In case of those petitions which are filed by senatorial or assembly district committees, statement must be made whether the same delegates to the state convention residing within the district shall nominate the candidate for senator or assemblyman in the district, or whether a separate set of delegates are to perform this function, and unless such statement is made, the delegates to the state convention are to exercise both functions. The same general provision applies to local conventions.

The petition must also state the number of delegates who are to compose the convention, and specify the basis of the apportionment upon which they are to be elected, which apportionment must be the same for all subdivisions, and in case of local conventions must be specified in detail. Where the petition fails to make the proper apportionment, the board of election commissioners is empowered to do so, except in case of failure to make an apportionment for a state convention, in

which case this duty must be attended to by the proper party committee within ten days after the receipt of the required notice from the secretary of state,[1] stating that copies of the petition for a place upon the primary election ballot have been transmitted to the election commissioners in the various counties and cities within the State. Primary elections are held on the second Tuesday in August in each even-numbered year for the election of delegates to all state, district, and local conventions, and on the same day in odd-numbered years, where general elections are held in any county. Where city or town elections are not held on the same day with other elections, special primaries are to be held on the sixth Tuesday preceding the general election. The board of election commissioners appoints the primary election officers, and determines the primary election precincts, which must not include more than three contiguous general election precincts. Gerrymandering is to some extent prevented by a provision that assembly, supervisoral, and ward lines must be respected. Each party uses its own distinct ballots. The various conventions to which delegates are to be elected are designated, as well as the number of delegates to be chosen. The names of the delegates are not printed upon the ballots, but the voter is required to put down his own choice, or to attach a slip of white paper containing the names of his choice in the proper place on the ballot "with any adhesive substance." [2] Any ballot containing the names of delegates to more than one convention *for the same*

[1] This notice is sent prior to forty days before the primary.
[2] See Part III, ch. XIII, on the preparation of a ballot.

territory will be disregarded.[1] In case of a tie vote, the convention determines which delegate shall sit and act.

The qualifications and the registration of voters, and the privilege of attending the primaries, are subject to the same provisions in the Constitution and in the Political Code, which govern general elections. When a new registration list is not completed in time to be of service at the primary, the old list, together with all corrections and changes made up to within ten days of the primary election,[2] is to be used. In order to vote, the name, address, and party for whose delegates the voter, in good faith, intends to vote, must be written upon the roster of voters. The ballot clerk then announces the same, and if a challenge is made the voter must declare that it is his *bona fide* present intention of supporting the nominees of such political party at the next general election.

Conventions are considered legal even though a precinct or political division has failed to send representatives. A majority is to constitute a quorum, and each convention passes upon the election and qualification of its own members. Proper credentials are issued and recorded. If any delegate refuses to act, he renders himself liable to a civil suit in the sum of twenty-five dollars, brought in the name of the State. This sum, together with the costs, is to be paid into the treasury of the county, or of the city and county. Provision is made that where no "board of election commissioners" exists, the common council, board of trustees, or board of supervisors, is to assume the functions of the board under the law. Where the rule is mandatory, "presiden-

[1] See Oregon decision, Part III, ch. X.

[2] This is the last day of registration.

tial primaries" are held on the first Tuesday in May for the purpose of choosing delegates to state and district conventions to select delegates to a national convention; provided, that where the national convention of any party comes before the fifteenth of May, delegates to the same may be selected in accordance with such rules as the party may prescribe. The ballots cast at the primaries are to be preserved until after the adjournment of the convention, and may be produced to decide contested elections. In case of vacancy by death, the remaining delegates from the territory or assembly district have the power to determine by a majority vote which of the delegates may cast an additional vote in the convention.

The California law, as briefly outlined here, is a most thorough one, and probably ranks as the best of its kind. It plainly shows the result of years of hard thinking over the reform of the caucus and convention system, and ought to prove itself a most decided improvement over previous methods of nomination in that State. Continuing, however, as it does, the complete and intricate convention system, it must be looked upon as modifying rather than as eradicating the evils of corrupt politics.

Illinois.

In Illinois the primary has been the subject of more than the ordinary amount of legislation. One might naturally expect this where population, industry, and wealth abound as they do in Chicago. In that city the primary early fell a prey to the corrupt politicians. Municipal government, with its countless duties, its offices,

and officers, was too rich a spoil long to escape the polluting hand of the boodle alderman and the "machine" politician. Political liberty could not long remain pure and unperverted where the rewards for its betrayal were so tempting. Party organization could not long escape the selfish thirst of one-man-power. Law was first resorted to for the removal of the evils which had crept into the nominating machinery of the State in 1885.[1] Four years later in 1889,[2] a more complete law was passed governing primary elections. This remained in force for nine years, and was followed by a still more thorough act,[3] which, however, was destined to stand for but one year; and in 1899 the law now in force was placed upon the statute books of the State.[4]

It would be tedious, as well as unprofitable, to enter into an elaborate discussion of each of these laws. They were not direct primary laws for the nomination of candidates, but were framed to secure improvement in the selection of delegates to conventions. It will probably be sufficient to merely indicate their main bearings. The laws of 1885 and 1889 were optional, and left considerable power in the hands of political parties. It is true that they contained detailed regulations respecting the proper publication of the notices of primary elections, and the manner of voting, as well as for the canvassing and returning of the votes. Yet the party committee alone decided upon the time and place of holding the primary. It also determined who might participate in the

[1] Session Laws of Illinois, 1885, p. 187.
[2] Session Laws of Illinois, 1889. p. 140.
[3] Session Laws of Illinois, 1898, p. 11.
[4] Session Laws of Illinois, 1899, p. 211.

same, and chose the officers who were to conduct them. Moreover, since the party committee was to decide whether the law should apply to the primary elections of the party or not, an opportunity was presented completely to avoid the law by refusing to adopt it.

Where politicians control party organization and select party officials, it is plain that optional laws, such as those of Illinois, would very likely be dead letters. What wonder that the primaries of the State not only failed to improve, but rapidly grew worse. More thorough and drastic steps were necessary. As a result a new move was made at the extra session of the legislature in 1898. The only hope lay in a compulsory law. A most thorough measure was drawn, but the opposition of politicians was so fierce that several of its most effective provisions had to be compromised. As a result there were introduced a sufficient number of loopholes to enable the political "bosses" to manipulate their "wires" quite as successfully, if not as easily, as before. This law of 1898 was so decidedly worsted by politicians in its passage, as to be called a "machine" product.[1] It remained in force but one year, and in 1899 was followed by a somewhat improved, yet imperfect act, which, however, largely failed to demonstrate such reformative powers as its friends hoped it might possess.

The law does not establish the direct vote system, but provides for the primary election of delegates to conventions. It is compulsory in counties of 125,000 inhabitants or more. In all other counties it may be adopted by a majority vote of the party when 1,000, or

[1] How to Reform the Primary, Arena, June, 1897, p. 1017.

at least one-eighth, of the party voters have petitioned for the submission of the proposition of its adoption to a popular vote. The question is then to be voted upon at the next state or county election upon at least ten days' notice. Only those political parties which cast at least ten per cent. of the total vote at the last preceding election are entitled to the benefit of the act. No concurrent primaries are held, as in the case of California, for example, but each party has its own days, preference in the choice of a primary date going to the party which applies first. The expense of primaries is public, and is paid out of the county or the city treasury, according as the primary election is held for the selection of delegates to county or to city conventions. From the point of view of economy, and for other important reasons, it is highly desirable to have the primaries of all parties held on the same day and at the same places. The primary election officers and three judges and two clerks, members of the same party, are selected by the party committee from the list of general election officers resident within the district.

Any party which desires to hold a primary election must, at least fifteen days before, make an application to the board of election commissioners. If no other party has already applied, it has a complete choice of dates, and may then issue its call which must set forth the name of the party; the day of the primary; the place of voting; the names of primary election officers; the name, place, and time of the conventions for which delegates are to be selected; the number of delegates for each district, proportioned according to voting strength, and

the name of some newspaper in which the party intends to publish its notices.

No formal test of party affiliation is required, but all persons possessing general election qualifications for voting may participate in the primary, provided they are members of the party and have not voted at any other primary. Membership in a party "may be proved by evidence of general reputation in the neighborhood, where said defendant resided at that time." Any qualified elector may be selected as delegate provided he is no primary election officer. One alternate is chosen, and if no delegate or alternate appears, the vacancy is filled by the remaining delegates from that political division in which it occurs. The polls are to be open from one o'clock to seven o'clock in the afternoon. The voter after having marked his ballot must fold it so as to display the judge's initials, as well as its number which must correspond to the number entered in the poll books that are kept. Each ticket of delegates is permitted to be represented by a challenger chosen by the majority of those named for delegates on any particular ticket. In order to discourage the stuffing of ballot boxes, any excess in the number of ballots as indicated by the poll books is drawn out and destroyed. In the course of the canvass, which must proceed uninterruptedly, all ballots which do not correspond with each other in names or conventions are counted separately from those which are alike in this respect. The act details and penalizes a large number of corrupt practices.

While this law has wrought considerable improvement over the preceding condition of the primaries, it nevertheless leaves one of the main difficulties unsolved. The

convention system remains undisturbed. Only one county in the State is covered by the law. "Machine" politics, while it is checked, continues to exist, more aggressive and more alert to every opportunity which may present itself for the exercise of its baneful influence. Dissatisfaction with this state of things has led to some discussion in favor of the abolition of the convention system and the nomination of officers by direct vote. In harmony with this movement a direct primary bill was introduced into the legislature of Illinois during the last year, which, since it contains the latest estimate of what the primary reformers of that State believe to point the way of escape from the pernicious control of corrupt politicians in the nomination of public officers, is briefly outlined below.[1] The bill was comprehensive in scope,

[1] The contemplated law was compulsory and applied to the entire State. It was controlling for all political parties which had cast at least 10 per cent. of the total vote at the last election, in the holding of all primaries for the nomination of all officers, except trustees of schools, school directors, members of boards of education, and officers of road districts in counties not under township organization. Any new political parties might avail themselves of the benefits of the law by presenting a petition signed by at least 10 per cent. of the voters of the political division. In order that a candidate might have his name placed upon the primary election ballot, he was required to present a petition signed by at least 5 per cent. of the voters of the political division, and to pay ten dollars to the county clerk, accompanied by an affidavit to the effect that it was his *bona fide* present intention to run for the nomination in the given office. Nominations by petition were to be continued under the general election laws as before. All parties were to hold primaries on the same day, which was also to be registration day. The open primary system, under which no declaration of party affiliation is required, was to be used, but no elector was free to vote unless his name appeared upon the last register, or he was qualified to vote at the next general election. Every voter was obliged to confine himself to one ticket. If tickets were "split," only the one containing the largest number of names was to be counted, or if an equal number of marks were discovered on two or more tickets, all were to be rejected. A canvassing board was provided for, consisting of the clerk of the circuit court, the county clerk, the county judge, and two justices of the peace of opposite political faith from that of the majority of the other members. The justices were to be selected by the county judge.

and plainly showed the influence of the successful Hennepin county law of 1899. The holding of concurrent primaries; registration upon primary election day; the requirements of a petition, a fee, and an affidavit; the open primary system—all these were important provisions in the Minnesota law.

The enactment of the law would have resulted in a most sweeping and effective change. It would have revolutionized politics and restored to the people a voice in government. Instead of tottering upon the apex of one-man-power, Illinois politics would once more have found a firm rest upon the base of democracy. The convention, that old, familiar institution, would have been wiped out completely. In its place there would have been put a new system, unfamiliar to the voter, to the candidate, and to the politician, which would have required new methods. No thorough and systematic movement for the abolition of the caucus and convention system had been carried forward over the State. It was therefore no marvel that those men, who had not yet thoroughly studied into the nature and effect of such a measure, were unprepared to give it their support. The education of the public into a full understanding of the advantages of direct nominations must necessarily be a slow process, and even though Illinois primary reformers failed in their efforts, balked as they were by "machine" politics and by an unripe public sentiment, there is no cause for despondency, for the history of primary reform in all the States illustrates the fact that repeated efforts invariably bring success.

Washington.

In Washington no direct primary legislation has as yet been enacted, although primary election laws relating to the selection of delegates to conventions were passed in 1890 and 1895. The act of 1890 was optional[1] and extremely imperfect. Dissatisfaction with its operation led to the enactment of a less defective and compulsory act in 1895, which is still in force.[2] It also concerns itself only with the selection of delegates to conventions, and is mandatory in all the incorporated cities and towns of the State. A new feature is found in the provision that persons to be voted for as delegates are to be selected in excess by at least twice the number to be selected in each polling precinct, and that this selection is to be made at least one day previous to the primary, by a caucus of qualified voters in each precinct. It would seem that a caucus of this kind, formed back of the primary, and entirely extra-legal in character, would ultimately fall a prey to the politician just as did the party-regulated caucus and primary. There is nothing to prevent the formation of a "machine" which might control the caucus, and place its delegates. The voter is, however, not forced to support the "machine" delegates which may be put up at the caucus. The law makes a provision for such a contingency by permitting any voter who is dissatisfied with the delegates who were nominated, to insert or add any names of delegates for whom he may wish to vote. This must prove ineffectual because of lack of previous agreement of the individual

[1] Session Laws of Washington, 1890, p. 419.
[2] Session Laws of Washington, 1895, p. 361.

voters upon the same candidates. This same caucus is also empowered to select three reputable citizens as primary election officers. The qualifications of voters, candidates, and delegates are briefly laid down, and an open, uninterrupted canvass of the vote is provided for.

While the Washington law of 1895 is a great improvement over the extra-legal caucus and convention system, it is nevertheless very imperfect. Because of the freedom retained by the political parties, too much irresponsible power is lodged in the hands of the party authorities. Where political combinations have entered into politics, the operation of a delegate system, such as is established by the Washington statute, cannot but yield more or less unsatisfactory results.

CHAPTER IX.

DIRECT PRIMARIES IN MINNESOTA.

Minnesota probably ranks first in the race for better primaries. The new direct primary law enacted in this State is unapproached anywhere else in the country. It proceeds from reform agitation which is of comparatively recent origin, and belongs mainly to the last four years. Yet, in the course of this brief space of time, the movement for better primaries has obtained a strength and foothold which is bound to keep it close to the front. Experience seems to have taught the people of the State a most wholesome lesson, and after having once overcome their misgivings and prejudices against institutions whose birth was marred by the abuses and misrepresentations of bitter enmity, they succeeded in placing themselves upon record at the last session of the legislature as generally satisfied with their experience in direct primaries, by enacting an extensive and complete law which will be closely followed in its operation by men in every State of the Union.

As late as six years ago, the primaries of Minnesota had not yet been made the subject of legislation, their entire conduct resting with the political parties. As elsewhere in the country, their extra-legal position resulted in many abuses, underhanded practices, and open corruption, which attained such proportions that in 1895 there was a general demand for action on part of

the legislature. In response to this feeling, a caucus law was enacted in this year, which aimed to remedy the most offensive practices that had grown up, by legalizing the caucuses; by requiring ample publication of the time and place of meeting; and finally, by giving the convention itself a standing in law.

So far direct primaries had not been discussed, but the first step in this direction had been taken. The body electorate of the State had been roused to thought and action upon the matter of primary reform; the legislature had responded to the popular will; and harmony for the prosecution of a common purpose seemed to be abroad. Under the law of 1895 the primary, however, still proved itself open to "machine" control, and the convention with its abundant possibilities of corruption, "trading," and "log-rolling," continued as before—a standing menace to popular government. The necessity of a more radical and thorough reform was apparent, and found its first expression in the Hicks direct primary bill, which was introduced into the legislature in 1897. This bill proposed to apply the Australian ballot system of voting to the primaries, and what was more important, aimed at the entire abolition of the convention system. Every voter was to be given a direct choice of candidates for public office by being given an official ballot, containing the names of the offices with blank spaces for the names of candidates who happened to be the voter's choice.

The enactment of this bill would have meant the abolition of "machine" politics; the destruction of the notorious "rings" of politicians who had dominated the

great municipalities of the State; and the restoration to the people of their power to choose the men who were to carry on the government of the Commonwealth. Though the bill received encouraging and enthusiastic support, opposition from politicians and from those who had not yet been educated into a thorough understanding of the measure resulted in its defeat. All that was accomplished in the way of primary legislation in 1897 was the passage of a law to supersede the act of 1895. It was based upon the same principle as the latter, and merely governed in greater detail the party action at the caucuses in the nomination of local candidates and in the selection of delegates to conventions.

Nothing daunted by their defeat, the primary reformers redoubled their efforts, continued their study of primary legislation in practical operation elsewhere, circulated publications throughout the State explaining the nature and effect of the direct vote system, educated the public into a more thorough understanding of the reform, made it an issue in the campaign, and framed bills which were comprehensive in scope and sweeping in effect. In 1899, some three separate measures were brought before the legislature. All incorporated the Australian ballot system, but differed otherwise in their methods of approaching a solution of the problem. Long and heated discussions followed, with the result that the best, and apparently most practicable, features of the three were combined, presented to the House as a substitute bill, and sent to the Senate by an almost unanimous vote. This bill which had been drawn so as to apply to the counties containing the cities of the first class, St. Paul, Minneapolis, and Duluth, was amended

in the Senate by limiting its operation to Hennepin county, including the city of Minneapolis, and in that form was put upon the statute books, as the now famous Hennepin county direct primary law.[1] After a generally successful trial in the year 1900, the Hennepin county system was extended to the entire State, as a result of an amendment to the original act, passed by the legislature in 1901. As it now stands, the Minnesota law incorporates the most extensive system of direct primaries yet placed on trial anywhere in the United States. Should success again follow on this broader scale, and there is no reason why failure should be looked for, then the cause of popular nominations will have received the best practical support and the strongest justification, that has come to it during its entire history.

The Minnesota law as it now stands is as follows:[2] Section 1 provides for the holding of primary elections at least seven weeks before any general election for the nomination of all elective officers in the State, except state officers who are chosen wholly by the electors of the entire State, and elective members of school, park, and library boards in cities having a population of 50,000 or less.[3] Primary election day is made the first day of registration, as provided for by law.

Section 2. The law is applicable only to those political parties which cast at least ten per cent. of the

[1] The Direct Primary in Minnesota, Outlook, May, 1899, p. 150.

[2] For complete text of the Minnesota law, see Appendix.

[3] The Hennepin county law of 1899 was confined to nominations for all elective positions voted for wholly within the county, and included judicial, congressional, legislative, county and city offices.

total vote polled at the last preceding election, for the leading candidates in their respective ranks, and to those which present petitions signed by at least ten per cent. of all the voters of the county, asking that they be granted the benefits of the law. All such parties may not make nominations for any office by petition.

Section 3. The primary election districts are to be coextensive with those determined for general elections, and are to be defined at least two weeks prior to the primary election by those officers upon whom this duty rests under the general election laws.

Section 4. Any person who desires to be voted for as a candidate at the primary election may have his name placed upon the ballot by filing an affidavit with the proper officers to the effect that it is *bona fide* his intention to run for the nomination for any specified office, and by paying to the secretary of state the sum of twenty dollars, if the office is to be voted for in more than one county, and ten dollars for any office to be voted for entirely within a county. The fees paid under this provision are turned into the state, county, or city treasury, according as the office is voted for in a district, county, or city.[1]

Section 5. At least nineteen days before the primary election, the secretary of state must certify to the various county auditors all the names of candidates for office filed with him, and to be voted for within the

[1] Section 4 of the law of 1899 required the filing of an affidavit but eleven days before the primary election; the presentation of a petition signed by a number equal to at least 5 per cent. of the total vote cast for the candidate of the party with which he affiliates, for the same position, at the last general election; and the payment of a uniform sum of ten dollars.

counties. These names, and all others filed with the county auditors, must be grouped by them under the proper parties at least fourteen days prior to the primary election, and must immediately be printed upon separate party ballots and published. The groups of candidates are to be arranged in the following order: judicial, congressional, legislative, county, and city.[1]

Section 6. The names of candidates for each office are to be arranged alphabetically according to surnames.

Section 7. The notice of a primary election must be given in accordance with the general election laws, and the place of holding the same is to be the place of registration, or the place where the last election was held.

Section 8. The judges and clerks of the general election, who also act in the capacity of a board of registration, are to be the primary election officers as well. They are empowered to appoint additional clerks, who are to receive no pay unless it appears that their aid was necessary.

Section 9. Although the judges and clerks of election act in a double capacity, they are entitled to receive only single pay.

Section 10. No voter can register on primary election day without personally appearing before the board of registration.

Section 11. At least nine days before the primary election, the secretary of state must forward copies of this law to the county auditors for use in the counties.

[1] Section 5 of the law of 1899, under which no names were filed with the secretary of state, provided that the county auditor was to group the candidates and to prepare sample ballots at least ten days before the primary.

Section 12. All saloons must be closed on primary election day.

Section 13. The general election laws govern in the arrangements at polling places, the ballot boxes, booths, officers, etc., except that there is to be no more than one ballot box for men and one for women.

Section 14. Supplies are furnished under the general election laws.

Section 15. Polls are to be open from six o'clock in the morning until nine o'clock in the evening. Any qualified electors present at the time of closing are to be allowed a reasonable time in which to cast their ballots.

Section 16. Registration and a declaration of party affiliation are required for participation in the primary. The voter is entitled to receive the ballot of the party with which he declares (under oath, in case he is challenged) that he affiliates, and whose candidates he generally supported at the last general election, and with which he proposes to affiliate at the next election.[1] A first voter is, however, not required to declare his past political affiliations.[2]

Section 17. After having received the proper ballot, the voter is to retire into the secrecy of the booth and there cast his vote as he sees fit.

Section 18. The ballot is then to be folded so as to conceal its face and to display the initials of the judges, and returned to the judge who deposits it in the proper

[1] For constitutional aspects of this test, see Part III, ch. X.

[2] Section 16 of the law of 1899 established the open primary system under which the duly-registered voter received the ballots of all parties pinned together, without any question as to his party affiliations, and with the privilege of voting the ticket of any one party.

ballot box, after which the voter's name is checked off upon the register.

Section 19. Before beginning the canvass, the judges and clerks are required to make and sign a statement indicating the total number of persons who registered, as well as the number of ballots cast by men and by women respectively.

Section 20. After the ballots have been sorted by parties and the count of all candidates is completed, they are returned to the ballot boxes while still fastened together in proper bunches. Certified returns are transmitted to the county auditor. The general election laws are made applicable to the canvass of votes as far as expedient.[1]

Section 21. Two tally sheets for each party, containing the names of the candidates in the order in which they appear on the official ballot, are to be furnished by the county auditor.

Section 22. The general election laws govern in the making of returns.

Section 23. The county canvassing board is to be composed of the clerk of the district court, the county auditor, the chairman of the board of county commissioners, and two justices of the peace of the same county, of opposite political parties from that of the majority of the other members of the board, who, if possible, are to be selected by the judge or judges of the

[1] Under the law of 1899, it was necessary, before beginning the canvass, to see whether the voters had in each case returned all the ballots. In case more than one ticket was marked, only the one containing the largest number of marks was to be accepted; or if the same number of marks were found on several tickets, all of them were to be rejected.

district court. No candidate is eligible to a place on the board, and any vacancy which may occur by reason of ineligibility is to be filled by the district judge.[1] Three members of the board are to constitute a quorum. The canvass is to begin at once, even though all returns are not in, and must be completed by the evening of the third succeeding day of the primary.[2]

Section 24. The following statements must be made by the canvassing board: (1) Separate statements as to each party containing the names of all candidates voted for and the number of votes cast for each; (2) separate statements as to each party, giving the names of the successful candidates; (3) a statement of the whole number of electors registered and the number of ballots cast, male and female, separately, at the primary election.

Ties are to be determined by the canvassing board by lot. After the completion of the canvass, the county auditor must officially notify all successful candidates of their nomination, and certify to the secretary of state on or before ten o'clock of the fourth succeeding day of the primary election, all returns as to the candidates who were voted for in more than one county. The officers who canvass the general election returns which are made to the secretary of state, are also to canvass the returns sent in by the county auditors. After the completion of the canvass, the secretary of state is required to officially notify the successful candidates of

[1] These provisions were not found in section 23 of the law of 1899.
[2] These provisions were not found in section 23 of the law of 1899.

their nomination, and to send their names to the county auditors.[1]

Section 25. All candidates who have been duly nominated under this law may have their names placed upon the general election ballot, provided they pay the further fee which is required.

Section 26. All expenses incurred under this law are to be defrayed in the same manner as those which are incurred under the general election laws.

Section 27. Whenever any error or omission has occurred, or is about to occur, in the conduct of the primary, the same shall be corrected or prevented by order of a supreme or district court judge, to whom affidavit has been made to this effect. Nominations may be contested within five days after the completion of the canvass.

Section 28. All provisions of the general election laws respecting offenses and their punishment, are made applicable to the primary elections.

The original bill as introduced differed from this law as outlined in some important respects. It was more comprehensive in scope, including as it did nominations for state offices; and it incorporated the open primary system which seems to have operated successfully under the Hennepin county act. Probably the most severe struggle was encountered over the provision relating to state officers. The Senate used all its influence to include them under the law, but the House threatened to "kill" the bill in that event, upon the ground that since

[1] Since under the law of 1899 no returns were canvassed outside of the county, this section required an amendment.

these officers are voted for in every county throughout the State it was believed that undue influence would be given to every large city, with the result that "St. Paul, Duluth, and every other city, excepting Minneapolis, would have to remain under the control of self-constituted oligarchies." The "machine" elements in the Senate, it appears, saw the strength of the situation, and, although unsuccessful, made a desperate effort to incorporate the provision in the hope that the bill could then be defeated.

The substitution of the closed primary system through the requirement of a declaration of party affiliation seems to have met with considerable objection from some of the most enthusiastic supporters of the bill.[1] While the law is generally conceded to be a decided improvement over its predecessor, there are those, even among its friends, who do not hesitate to declare that "it retrogrades in one thing—in the imposition of a test by which the ballot is made public." It is stated that "ringsters" in the Assembly instigated the change under the catch cry, "make every man show his colors." It will be seen that by compelling him to do so, politicians are enabled to exercise a direct influence upon the voter, whereby he may lose the freedom of the ballot, and may become the servile instrument of the political "boss." [2]

During the progress of the discussion on a test, an amendment was urged providing that every man ask and be given a single ticket without any questioning respect-

[1] In Wisconsin exactly the reverse occurred. The original Stevens bill incorporated the closed primary, which was replaced by the open primary in the committee rooms.

[2] See Part III, ch. IX.

ing his party affiliations.[1] This, it will be seen, was a slight modification of the open primary system under which the voter receives the tickets of all parties, either pinned together or printed in one sheet. It was, however, rejected upon the ground that it entirely eliminated the right of challenge, whereby a party can protect its own ticket from the assaults of an opposing party under closed primaries, and at the same time failed to secure the secrecy of the ballot which is the cardinal virtue of the open primary system.[2] Another important deviation from the Hennepin county law is found in the abolition of the nomination paper signed by a specified number of voters, and the substitution therefor of a simple fee and an affidavit, as a qualification for a place upon the primary election ballot.

The Minnesota law differs in a very important particular from all of the direct primary laws of a wider scope which have been enacted or proposed, in that it makes absolutely no provision for the maintenance of party organization by designating some means whereby party committeemen are to be selected.[3] One of the staunchest adherents and framers of direct primary legislation in Minnesota, says that "it is a bad plan" to make provision for the selection of party committeemen in direct primary laws. "Party organization should be

[1] The Ives amendment.

[2] Should voting machines be employed under the open primary system, they could be so geared as to make it impossible for a voter to cast his ballot for any candidates but those upon some one ticket which he might select. This would most effectively guard against "trading" and "ward-scheming" by the minority party, which is generally resorted to wherever "splitting" of tickets is allowed.

[3] This feature found a most thorough incorporation in the Stevens bill of Wisconsin, as well as in the Morgan law of Oregon.

left to each party by itself, and the party that can think of the best plan deserves the benefit of it." [1] Under the Hennepin county law of 1899, the Republican party used the following simple plan: By party rules it was provided that when presidential caucuses were held, the delegates were to select their party committeemen. One county committee was selected which took the place of the various judicial, congressional, county, city and county committees. It was found that much better work was done with one central committee, and less money needlessly expended than under the previous system. While this scheme may continue to work satisfactorily there is no good reason why the selection of committeemen should be left to the "party" under party rules, while its candidates are chosen under law. It would be no great inconvenience to the voter to select his own party officers, while the possibility of "machine" influence in their choice would be largely eliminated.

[1] Oscar F. G. Day, in Minnesota primary election pamphlet, 1900.

CHAPTER X.

DIRECT PRIMARIES IN OREGON AND MICHIGAN.

Oregon.

The last legislature of Oregon made an effort to place that State among the leaders in direct primary reform by enacting two laws on successive days. The first act passed regulates the selection of delegates only, and is compulsory in cities having a population of 10,000 or over. The second act, known as the Morgan law, which has since its passage been declared unconstitutional, was compulsory in counties of 50,000 inhabitants and over, and abolished all conventions in such counties. Portland is the only city having above 10,000 inhabitants, and Multnomah county, in which Portland is located, the only county containing a population of over 50,000. Hence, the two laws would apparently have conflicted, but the earlier act was so framed as not to interfere with the direct primary law proper, and would have been entirely inoperative, save as to parties of less strength than ten per cent. of the vote of the city, while the direct primary law would have obtained for all other parties. Originally the direct primary bill applied to the entire State, but as finally passed it included only nominations for local judiciary, county, city, precinct, and party officers in Multnomah county.

Oregon passed its first primary election law in 1891.[1]

[1] Session Laws of Oregon, 1891, p. 4.

It regulated the method of selecting delegates, and applied only to cities containing a population of 25,000 or more. General election qualifications were required for voting, and upon challenge it was necessary to answer successfully, and under oath, all questions put as to the right to vote. Under party rules, a declaration of party affiliation was required. The act contained regulations respecting notices, penalties for corrupt practices, outlined the duties of the primary election officers, and, where expedient extended the general election laws to the primaries.

On February 21, 1901, the Lockwood act was passed, applying to the primary election of delegates to conventions in cities having a population of more than 10,000 inhabitants. The county clerk designates a primary day, which must not be less than sixty days before the holding of the general election. He also has a notice served on the general election judges and clerks to act as primary election officers. Any political party that is allowed to vote its own ticket at the general election, may participate in the primary; but it must, at least seven days prior to the primary, publish a notice of the holding of a convention, stating the date, purposes, number and apportionment of delegates, etc. Any time prior to four days before the primary day, the various parties may propose lists of delegates to be voted for, which are to be known as "regular tickets." A splendid opportunity is given to "independent movements" by allowing any ten or more members of the same political party, who reside in the same precinct or ward, to propose another list of delegates at any time within two days preceding the primary election, to be known as an "in-

dependent ticket." If there be a number of such tickets, they are to be distinguished from each other by serial numbering, one, two, etc., in the order in which they are filed. Official ballots are furnished, which are separate for each party, and also separate for the "regular" and "independent" tickets within each party, if there be such. Each class of tickets has its own ballot box. The general election officers act under oath, and possess their regular powers. The polls are open from eight o'clock in the morning to six o'clock in the afternoon.

A strong point in the law is the excellent provision made against fraudulent participation in the election by members of opposing political parties. Party registration is required; and if not registered and challenged, the voter must prove his qualifications under the general election laws as well as his party affiliations, and as a final test must, under oath, declare that he voted for a majority of the party's candidates whose ticket he now desires to vote, at the last general election, or that he intends to do so at the next general election. The provision makes way for the voter who was naturalized since the last election, and for minors come of age, as well as for those who have changed their party affiliations, or who failed to vote at the last election for one reason or another.

When the voter steps up to cast his ballot, he states his name and residence. The first clerk then announces his party affiliations on the basis of the registration records, enters the name, residence, and party in the poll books, and writes the name and number of the voter upon each of the two stubs found on the upper corners of the ballots. One stub is then removed, and the ballot with the

remaining stub still attached to it, is handed to the voter. The detached stub is then passed to the judge, and finally to the second clerk, who immediately enters the name and number in the poll books of the proper political party. The voter returns the marked ballot to the chairman, who again announces the name, residence, and party, removes the remaining stub, and passes it to the second clerk, who compares it with the counterpart to see if the ballot returned is the identical official ballot which was received. The chairman then casts the ballot into the proper party box without disclosing any marks or writings that have been placed upon it. The returning board is composed of the county clerk and two justices of the peace "taken to his assistance," and begins its duties the day following the primary. Those persons receiving the highest number of votes are the representatives of the parties in the conventions.

The maintenance of party organization is also provided for in the act by vesting in the convention of delegates chosen under this law, the power of electing one committeeman for each precinct or district. The committeemen thus elected in the counties are to constitute the county central committee, and in cities they are to be the representatives of the party on all ward or subdivision committees. The term of office is two years, and all vacancies are filled by the remaining members, who also have the power to make all party rules not inconsistent with this law; to make nominations in case of vacancies; to elect a chairman, secretary, and executive sub-committees; and to apportion the delegates to county or lower conventions in accordance with the party vote

at the last preceding election for president or governor, upon a ratio determined by the committee.

On the next day, after the passage of the Lockwood act, the legislature enacted the unconstitutional Morgan law [1] making the holding of direct primaries compulsory in counties having a population of 50,000 or over, and optional in all other counties, for the nomination of candidates for district, county, municipal, precinct, and all other public offices to be voted for entirely within the confines of the county; for the adoption of party principles and policies, and rules of party government; for the election of party officers, managers, and committeemen; and for the election of delegates to conventions. In brief, it governed political parties in all their operations, and in the performance of all their functions. It applied to all parties which had cast at least ten per cent. of the entire vote at the last general election, or which presented petitions signed by that number of voters. It punished by fine any action of a political party inconsistent with the act, and likewise made unlawful the "promoting, publishing, repealing, or representing of any plan, system, or rule of organization, or constitution, or any rule or regulation, or any declaration of party policy or principle," which had been adopted subsequent to the first primary without being reaffirmed in that primary. The term of office of party officers was limited to four years, but might be made shorter.

All names of candidates and propositions, party rules, etc., which were to be printed on the ballots, were to be

[1] Session Laws of Oregon, 1901, p. 40.

presented on petition of individual members of the party, the signatures to number at least five per cent. of the vote cast in the particular election district by the party for that candidate who received its highest vote. These petitions were practically the same as those now used to make independent nominations. All petitions were to be filed with the county clerk, or the clerk of the county court, whether they pertained to county or city or other offices. The county clerk was to perform all duties with reference to making up the ballots, etc., as he does under the general election law. With all petitions presenting the names to be printed on the ballot, a fee of ten dollars was to be deposited, the same going to the general fund of the county. No fee was required in case of other petitions presenting resolutions to be voted on. Signers of petitions were to be qualified electors in the election district for which the petition was presented, and they were to be residents of different parts of the district, so that at least each of one-half of the precincts thereof would be represented by signatures in such number as bore the same ratio to the whole number of signatures thereon as did the number of votes cast by the party in the precinct bear to the number of votes cast by the party in the election district for which the petition was presented. For instance, suppose that a certain party had polled 10,000 votes of the county at the last election for its candidate receiving the highest vote. Five hundred signatures would have been required upon a petition presenting a name to be printed on the ballot. There being one hundred precincts within the county, it would have been necessary to gather these signatures from at least fifty precincts. If one of these precincts had polled

two hundred votes, or one-fiftieth of the party vote of the county, then ten or one-fiftieth of the signatures on the petition would have been required from that precinct, the other forty-nine precincts being represented on the same basis. The other signatures to the petition might have come from the same precincts or from any other precincts, or from any one precinct. In case of changes in the precincts or districts, an approximation was to be made under the law so as to conform to this feature as near as might be. Signatures were allowed on different papers, but otherwise each paper was to have all the requisites of a complete petition. Two signers were to take oath, and the certificate of the oath was to appear on the petition, that the statements in the petition were true; that it was signed by qualified persons who were members of the party; that the signatures were genuine; that the candidate named therein, if any, was eligible; in short, that the petition complied with all the requisites of the law as enumerated.

In signing petitions, a voter was to act consistently as a member of but one party, and he was to sign but one petition for the same office, and one petition presenting a resolution on the same point. No person was to be a candidate for nomination to more than one public office, but he was free at the same time to be a candidate for a party office or delegate, or the candidate of different parties for the same public office. All petitions were to have at their head a warning, stating the penalty for a violation of the law in signing the same. The officer whose duty it was to receive petitions for the presentation of candidates for nomination at the primaries, was also to receive petitions of regular nomination for

office or for delegates to convention when the party authority certified under oath that under the rules of the party and under the provisions of the law, such officers or delegates were to be chosen at their next primary election. Should the party committee fail to make the required certification within sixty days before primary day, twenty days were to be allowed to the individual members of the party to present a certificate over the signatures of party men equal in number to that required for petitions. Provision was made for the election of delegates to those conventions which were held to make nominations to those offices which were not included under the law.

In the matter of the extension of the general election laws to the primaries, the Oregon law was one of the most perfect of all direct primary laws. It enumerated in detail all the provisions that were to apply, and with scrupulous care in the wording, precluded all possibility, it seems, of a question as to the intention of application. Provision was also made that any amendment of the Australian ballot law was to work the same change in the primary law. The polls were to be open from eight o'clock in the morning to six o'clock in the evening. In order to participate in a primary election it was necessary to be qualified as a voter under the general election laws, and to be duly registered in accordance with the registration laws. Registration might be completed on primary election day. At the polls all affairs were to proceed as at the general election, save in respect to some features necessarily peculiar to the primary election. The tickets of all parties were to be arranged on the same ballot, one column on the ballot being given each party.

The candidates' names were to appear but once in each column, and were arranged alphabetically by surnames. Then followed the delegates to the different conventions, the party officials, and finally, at the bottom, the propositions.

After having received a ballot, the voter selected the column of his party and then proceeded to mark his ballot, the same as in general elections.[1] If he marked in more than one column he was counted as having voted in that column in which he had marked the most votes, and if he marked no more votes in one column than in any other, his entire ballot was rejected. Blank spaces were left in which names might be written, so that the voter was not confined to the names printed on the ballot. He had the most perfect liberty, if he acted as a Republican, to say who should be the Republican nominee for any office, but he could not say that any particular person was to be the nominee of the Democratic party for any office. If, however, he wished to vote for any particular Democrat, he could only do so by completely forsaking his own party and foregoing his entire right to vote for any or all of the Republican candidates. This provision established what is known as the open primary system, such as was incorporated in the Hennepin county (Minnesota) law of 1899, under which the crossing of party lines and the casting of votes for candidates not of the voter's party, is possible. The probability of this would seem to be very remote, since it entails the loss of the voter's entire vote for his own party to vote even for a single candidate on the ballot of any other

[1] For the method of handling and identifying the ballots, see the discussion of the Act of February 28, 1901.

party.[1] In the canvass two tally sheets were required for each party ticket, upon one of which the record of votes on the propositions submitted, was kept, while the rest of the ticket was recorded on the other. The method of counting and returning the votes was similar to that embodied in the act of February 28, 1901, which has already been discussed. Ample provision was made for the correction of all possible errors or omissions, and any nomination or election might be contested within five days after the primary election. The law looked towards economy by providing that sealed bids were to be received for printing jobs, and the furnishing of supplies and stationery. All bills were to be audited, and paid out of the regular county funds. Part of these funds were provided through the fees of ten dollars each which were required for the filing of petitions of names. Fines were imposed for the violation of any of the provisions of the law.

The law as briefly outlined was thorough and complete and ought to have yielded good results. The adverse decision of the supreme court was extremly unfortunate in that it removed a most excellent opportunity for giving the direct vote principle a fair trial in Oregon, for the Morgan bill was undoubtedly one of the best direct primary measures presented to any legislature during the last year.

Michigan.

Much attention has been paid to primary legislation in Michigan. The first act was passed in 1887. It was amended in 1893, and two years later was superseded

[1] See Part III, ch. X, for the constitutional aspects of this provision.

by a new and more complete law. This legislation, however, dealt with indirect primaries, and retained the convention system in full. The first expression for direct nomination in any concrete form was presented in a bill to the legislature in 1897. The first fruits, however, of much labor for the reform, is a law passed by the last legislature, establishing direct primaries in the city of Grand Rapids.

In 1897, the first Colby bill, contemplating compulsory direct primaries throughout the State for all officers, was introduced. Opposition, however, was too strong at the time to permit the measure to pass. Two years later the legislature was confronted by a second Colby bill, which also provided for a compulsory system embracing all offices of the State.[1] This bill also failed to pass the legislature, and in 1901 the third Colby bill came up for consideration.[2] The hopelessness of secur-

[1] Under this bill the registration and primary days were to be concurrent. As a qualification for a place upon the primary election ballot, nomination papers, signed by 500 voters in case of offices to be voted for in more than one county, by 100 voters in case of city and county offices, and by 25 voters for township and ward offices, were to be filed by candidates. All primaries were to be held on the same day, and at the same time and place. Each party was to have its own ballots, upon which the names of the candidates were arranged in their proper groups under the various offices, according to an order to be determined, not alphabetically, but by lot. The closed primary system was incorporated, under which party enrollment or a declaration of party affiliation was required for participation. The following test oath was required of all those who had not enrolled themselves with some party the last preceding primary; who had changed their affiliation; or who had not voted before: "I do solemnly swear that I am a member of the political party, the ballot of which I now seek to vote, and am in sympathy with its principles, and it is my present intention to vote on election day for the candidates for whom I now desire to vote at this primary, if they are nominated, so help me God." The platform was to have been formulated by a convention of specially-elected delegates, chosen sixty days before the primary, or by the candidates in case the party committee failed to direct the election of delegates.

[2] In order to have their names printed upon the primary election ballot, candidates were required to file nomination papers signed by from 25 to 100 voters, according to the importance of the office, and to pay a fee equivalent to one-

ing the enactment of a comprehensive law seems to have been felt, so that the bill was limited in its operation to Wayne county for the nomination of candidates to legislative, congressional, judicial, county, city, and ward offices. The fight over primary legislation during the last session of the Michigan legislature was a most desperate one. In the Assembly the measures were generally supported, and several passed by an overwhelming vote. The Senate, however, inspired by "machine" influences, assumed a strong attitude of defiance. Those senators who were afraid to trust their renomination to the direct vote of their constituents, refused to commit political suicide by supporting the bills, and so defeated them with the exception of one, which became a law, and received its first successful trial last spring.

This law, as finally passed, provides for the holding of primary elections in the city of Grand Rapids at least three weeks before the general election, for the nomination of all elective city officers and all other elective officers, except elective members of school boards, who are chosen at the ensuing election. Any person who desires to try for a nomination must, at least ten days before the day of the primary election, file an affidavit with the city clerk to the effect that it is his *bona fide* present intention to run for the nomination of any specified office. In addition to this, he must also pay the sum of fifteen

half of one per cent. of the salary and fees which were received during the last fiscal year by the person holding the office for which a nomination was sought. But the fee was not to exceed the sum of twenty-five dollars. The primary elections of all parties were to be held on the same day, and at the same time and place "as the first regular continuous secular day sessions of the board of registration," both in April and November. The provisions respecting a test, and the formulation of a party platform, were the same as those already explained in connection with the law of 1899.

dollars to the city clerk in case he intends to run for any office except that of a ward, in which case a fee of but five dollars is required. Separate ballots are to be used by the different political parties, upon which the names of the candidates are arranged alphabetically, grouped according to the importance of the offices beginning with the judicial, then the legislative, and finally, the city and ward positions for which nominations are to be made. Sample ballots are provided for, and official ballots may be distributed only through the city clerk.

The primary elections are to be held at places to be designated by those persons who perform this duty in case of general elections. Booths, railings, and gates are to be put up in accordance with the general election laws. Proper notice of the primary election must be given at least ten days before, and must designate the offices for which nominations are to be made. The primary election inspectors are to be appointed by the common council in the same manner as are the general election officers, but two of the three members of each board must be chosen from the strongest political party. The one first appointed is to be chairman. Their term of office is fixed at two years, and their compensation at two dollars and fifty cents per day. Vacancies are filled by the remaining inspectors from among the electors present at the opening of the polls, in the same manner as at general elections. The inspectors are empowered to appoint two clerks and two gatekeepers who serve at one dollar and fifty cents per day. The polls are to be kept open from twelve o'clock noon until eight o'clock in the evening.

"No voter shall receive a primary election ballot, or be entitled to vote, until he shall have first been duly registered as a voter then and there in the manner provided by law, upon which registration (unless challenged, and if challenged, then only in the event that the challenge has been determined in favor of the voter) he shall be entitled forthwith to receive the ballot of the political party with which he then and there states he is affiliated." Duplicate copies of registration books are to be made and preserved. The voter, after having received a ballot, retires into a booth and there marks the ballot as he sees fit, and after having properly folded it, returns it to the inspector in charge of the ballot box, who deposits it in the box of the proper party.

As soon as the polls are closed, the inspectors must begin a public canvass. If the whole number of ballots found in the boxes is in excess of the number of electors voting, according to the poll lists, the number in excess is drawn out as provided in the general election laws. The tally sheets, of which there are to be two sets for each political party, are to be delivered to the city clerk within twenty-four hours after the close of the polls. The common council is to appoint three of its members, none of whom are candidates for nomination, and who represent the dominating political parties, as a board of canvassers. The members of this board are to receive three dollars per day for their services, and are to work continuously until the canvass is completed. Upon the completion of the canvass proper statements of the results must be filed with the city clerk. These statements must be separate for each political party, and must show the names of all candidates voted for, with

the number of votes received by each, and for what office, together with the names of the successful candidates and a statement of the total number of votes cast. Ties are to be decided by the canvassing board by lot. Only those candidates who have been nominated at a primary election held in accordance with this act are permitted places upon the official ballots at the ensuing general election. In case of a vacancy in any office, the same is to be filled by the city campaign party committee, or if no such committee exists, then by mass convention of the party in which the vacancy occurs. The candidates of each party who have been nominated are to select the chairman and the secretary of their respective city and legislative campaign committees. It will be noticed that no provision is made in this law for the election of party committeemen. In this respect it resembles the Minnesota law of the present year, as well as that of 1899. Otherwise, the Michigan act is quite complete and ought to yield good results, even though it is of but local operation.

CHAPTER XI.

ENACTED AND PROPOSED PRIMARY LEGISLATION IN WISCONSIN.

Wisconsin has within the last few years come to the front in primary reform. The struggle which since 1896 has been waging with ever-increasing fierceness has now become of general interest and significance. Led by the most faithful and able champion of the direct primary, Governor La Follette, it has grown beyond the lines of parties, and now numbers in its ranks an overwhelming majority of the people of Wisconsin. So thorough have been the campaigns, so persistent has been the urging of specific ideas of reform upon the public, so widely have these ideas been circulated, that press and platform from Boston to San Francisco have accorded them comment and eulogy, and the progress of direct primaries has been markedly promoted in adjoining States and throughout the country. Yet, though the Commonwealth has been aroused, though the people have spoken in convention and at the polls for this reform with overwhelming majorities, their will has been defeated, their mandate ignored, and so the struggle still goes on.

From 1890 on, "caucus laws" followed each other in rapid succession in the years 1891,[1] 1893,[2] 1895,[3]

[1] Session Laws of Wisconsin, 1891, ch. 249.
[2] Session Laws of Wisconsin, 1893, ch. 239.
[3] Session Laws of Wisconsin, 1895, ch. 288.

1897,[1] and 1899.[2] Since these laws do not contemplate direct primaries, but a continuation of caucuses and conventions, only their main bearings will be indicated. The act of 1891 applies to all counties having a population of 150,000 inhabitants and over, for all city, special, as well as general elections.[3] It did not apply to judicial elections or to the election of delegates to state conventions. Booths, such as are used on general election day, were to be erected, but no two parties were to hold primaries on the same day. Nomination papers signed by at least ten qualified voters were required, and a number of direct primary provisions were incorporated, which need not be dwelt upon here. The law of 1893 again restored the original caucus meetings, and applied to counties with 200,000 inhabitants. (Milwaukee county.) The Mills law of 1895 repealed the previous act, and established another system of caucuses and conventions in the city of Milwaukee, which very closely approximates to the present system. In the law we find a provision of a "preliminary meeting" of the electors of the party to be called by the chairman of the county committee four days before the holding of the caucus, to propose delegates and candidates to be voted for at the caucus. In 1897 a new Mills bill was enacted applying to cities of the first and second class.[4] Candidates were again proposed by a "preliminary meeting," their names published on official ballots, and voting

[1] Session Laws of Wisconsin, 1897, ch. 312.

[2] Session Laws of Wisconsin, 1899, ch. 341.

[3] Milwaukee county is the only county in the State with a population of 150,000 or over, and the law was framed for that county as a local law.

[4] Milwaukee, La Crosse, Oshkosh, Superior, Racine, Sheboygan, Eau Claire, Green Bay, Madison, Marinette, Appleton, Fond du Lac, Janesville, Ashland, Wausau.

booths used. The law was optional for the rest of the State, and upon petition of ten per cent. of the voters of the city, the question of adoption was to be submitted to a vote. If challenged, an affidavit was required from the voter that he was duly qualified, and that he voted for the regular party candidates at the preceding general election. This test was plainly unfair and unconstitutional in that it disfranchised all voters who, though qualified, had for one reason or other failed to vote at the last election; who had been naturalized; or who had come of age since the last election.

The present law, passed in 1899, contains regulations applicable to the rest of the State outside of counties containing 200,000 inhabitants. General registration is required in all the cities of the State, and participation in more than one primary is made punishable. The principle of a direct vote, as recognized by this law, is applied only in towns, villages, school districts, and wards of cities for the election of aldermen, supervisors, and justices of the peace. In all other cases candidates are nominated by convention or by petition, in accordance with law. The caucus law of 1899 is an admittedly thorough one, but it by no means secures to all voters a fair and equal voice in the choice of candidates. In Wisconsin, as elsewhere, it has been found that there are certain evils in our nominating machinery which no amount of caucus legislation can remedy. Such legislation can improve, and does improve, but it cannot cure. It is good as far as it goes, but it does not go far enough, because it leaves the whole system of conventions, from the highest to the lowest, untouched. With this conviction, and imbued with the desire to find some means

of overcoming the difficulty, some of the leading public-spirited men of the State have for a number of years been close students of the principles of the direct primary system and pioneers in the field for this great reform. They have from time to time, through the press, from the platform, or public rostrum, given to the people the best thought and most advanced reasoning upon the subject.

The origin of the movement for direct primaries in Wisconsin, is not only interesting but instructive. As is well known, a majority of the delegates who met in Milwaukee in 1896 to nominate the Republican candidate for governor were pledged in support of Mr. Robert M. La Follette. However, when the convention met, it was found that the "machine" element of the party had succeeded in winning over a sufficient number of La Follette delegates to place their candidates.[1] So forcible did this defeat of the popular will bring home to Mr. La Follette and his friends the necessity of a complete reform of our nominating institutions, that a resolution was made then and there to devise some means whereby the people of the State might have restored to them an effective voice in the nomination of public officers. That hour was the birth of a policy of active campaigning in favor of direct primaries which in 1900 found its culmination in the election of Mr. La Follette as chief executive of the State.

[1] On the day before the convention met, rumors had been spread of the purchase of votes, and on the evening of the same day representatives of the "machine" appeared before the La Follette delegation with information of the impossibility of nominating their candidates, and suggesting at the same time that it was to the interests of the party, as well as themselves, not to make any hostile display.

In 1897 the first specific move was made towards direct primary legislation in Wisconsin. A bill, known as the Lewis bill, embodying the most desirable features of the direct vote system, as seen by its promulgators, was introduced into the legislature.[1] It abolished all conventions and provided for but one primary to be held on the first Tuesday after the first Monday in September of every year, at which all officers to be voted for at the fall and spring elections were to be nominated. The primaries of all parties were to be held on the same day and at the same place. Candidates were required to file nomination papers in order to have their names placed upon the primary election ballots. Perhaps the most novel feature of the whole bill was the one-primary-a-year idea, which can be defended only on the ground of economy and greater interest, and the resultant larger attendance at the polls; but there are many serious objections to choosing candidates for spring elections, which ought to be taken out of politics as far as possible, in the fall, when party strife is keenest and party feeling is at its height.

The Lewis bill was defeated, but the fight went on, led by the indomitable spirit of Mr. La Follette. On February 22, 1897, he addressed the University of Chicago upon "The Menace of the Machine." It was a discussion of the principles of democracy, and an arraignment of the political "machine" and its methods which attracted the attention and received the approval of leading journalists throughout the country. In this address the most comprehensive application of the direct

[1] The bill was drawn by Mr. La Follette and the Hon. Samuel A. Harper, and introduced by Hon. Wm. T. Lewis of Racine.

vote system which had been suggested by any one was urged and the essential features of a direct primary law briefly but clearly outlined.[1] In March of the next year, 1898, Mr. La Follette delivered a most inspiring address before the University of Michigan, in which his prophetic words, "The fight is on. It will continue to victory. There will be no halt, and no compromise," voiced the ruling spirit of the struggle which was growing with the years.

The wide circulation given to the La Follette addresses, as well as other speeches and publications upon the subject during this period, added greatly to the popularity of the cause in Wisconsin and in other States. "The principle was then clearly defined, and the plan under which it could be accomplished was then fully presented. From platform and pulpit, before agricultural societies, good government clubs, political clubs, debating societies, in the schoolhouses and public halls, wherever men were gathered together, the dangers which threatened representative government were discussed,

[1] If the eminently wise and practical suggestions as to how the "machine" may be stripped of its power in our party politics, which Mr. La Follette elaborated in his address before the students of the University of Chicago, ultimately find embodiment in state laws, the people will have occasion to feel grateful that men of his calibre have been forced into conflict with "machine" fighters. Laws based on the lines suggested in Mr. La Follette's admirable address will afford the only practical relief from the despotism of "machine" politics. The Chicago Times-Herald, Feb. 25, 1897.

Mr. La Follette, out of personal experience and wide observation, finds the weak point in our method of selecting public officers to be in our primaries. We have adopted the secret ballot and secured to the voter the opportunity to use his uncoerced judgment in electing officials, but we have done nothing to secure to him an equally open and free choice in the selection of candidates by his party organization. If his party is dominated by a "boss" and his "machine," all that is left to any voter to make effective protest is to vote for the candidates named by some other "boss" and his "machine." Evidently, we have gone but half the distance in needed reform by adopting the Australian method for election. St. Paul Globe, Nov. 4, 1897.

the cause plainly traced to the selection of candidates by the 'bosses,' and the vital importance of election by the people by direct vote, and the necessary provisions of a primary law, were fully and fairly presented. The plan was so overwhelmingly approved by the voters that both the great political parties of the State, the Democrats in 1898 and the Republicans in 1900, adopted, without qualification or limitation, the principle of the nomination of all candidates by direct vote of the people at a primary election, in lieu of nominations by delegates through the machinery of caucuses and conventions."[1] But in spite of the strong public sentiment in 1898, the "machine" again succeeded in nominating its candidate for governor. However, Mr. La Follette was sufficiently strong in his party to force a concession from the "machine" by compelling the adoption of a plank in the platform "demanding such legislation as would secure to every citizen the freest expression of his choice in the selection of candidates."

During the session of the next legislature in 1899, the Bryant direct primary bill was introduced. It resembled in many of its features the Lewis bill. It applied to the nomination of state, congressional, legislative, and county officers. All parties were to hold primaries on the same day, and at the same hours and places. Party committeemen were to be selected in the different precincts. The chairmen of such committees were to compose the county committees, and the chairmen of the county committees, the state central committee. For participation in the primary, previous

[1] Governor La Follette's veto message of May 10, 1901.

registration was required, as well as an answer to the question: "Which party do you desire and intend to affiliate with?" The platform was to be promulgated by the state central committee, and all expense borne by the political parties.

The Bryant bill met with a similar fate as the Lewis bill. But there was "no halt and no compromise." The results of many years of persistent agitation could not be suppressed much longer. Though the "machine" was strong, its strength lay in the submissive and unquestioning voter whom it had successfully duped. However, "continued rapping brought the voter to the door." He heard, and saw, and believed that the direct primary would offer something better, and in that belief he came strongly to the support of Mr. La Follette and the "anti-machine" element of the Republican party in 1900, thereby defeating the "machine" and bringing closer the day of direct primaries.[1]

The nominating convention which chose Mr. La Follette as its candidate in 1900 framed a platform which contained the plank: "The great reformations effected in our general elections through the Australian ballot inspire us with confidence to apply the same method in making nominations, so that every voter may exercise his sovereign right of choice by direct vote without the intervention or interference of any political agency. We therefore demand that caucuses and conventions for the nomination of candidates for office be abolished by legislative enactment, and that all candidates for state, legis-

[1] Having been a close observer of the recent effort at reform in Wisconsin, and a personal witness of the discussions in the legislature, the writer feels able to detail the struggle against the "machine" as generally typical of what must be contended with in the prosecution of the primary reform.

lative, congressional, and county offices be nominated at a primary election, upon the same day, by direct vote, under the Australian ballot." The overwhelming vote cast for Mr. La Follette at the ensuing election—the largest ever cast for governor in the State—crowned the struggle which had "continued on to victory," and cleared the way for the Republican party to carry out the direct primary plank of its platform. A law was now almost a certainty, for if platform planks mean anything, that plank meant that every Republican member of the legislature was pledged to vote in favor of a direct primary law which complied with the provisions of the platform.

When the legislature met, one of the first measures to be introduced was the carefully drawn Stevens direct primary bill, which after two readings went to the committee rooms. This bill provided for the direct nomination of all officers of the State, (except judicial, village, township, or school district officers) who were not nominated by petition in accordance with the statutes of 1898. Primary elections were to be held at the regular polling places, on the first Tuesday in September, 1902, and biennially thereafter, for the purpose of nominating candidates to be voted for at the next general election. In case of spring elections, the primary was to be held at least three weeks before the election. All parties were to hold their primaries on the same day, and at the same time and place, at public expense, under the supervision of the general election officers, and as far as possible in accordance with the general election laws. Separate ballots were to be provided for the different parties, and no person was to be allowed to vote unless

he was duly registered and affiliated with the party whose ticket he desired to vote. Each party was to canvass its own vote through its party officers. The state platform of each party was to be framed by its candidates for the state and legislative offices. The maintenance of a proper and popular party organization was provided through the biennial selection of committeemen at the primaries of each precinct. The county chairmen at their meeting to canvass the vote for state officers were, in proper years, to choose by ballot the electors of their party for president and vice-president, while delegates to the national conventions of the different parties were to be chosen at elections held in April in the proper years.

The Stevens bill, which is printed in full in the appendix, was doubtless the most carefully wrought out and complete bill for direct primaries yet presented to any legislature.[1] In the committee room the bill was thoroughly considered and certain amendments made.[2] The most important were: The substitution of the open primary for a closed or party primary by the abolition of the test of party affiliation; from this fol-

[1] This statement is based upon a careful examination of direct primary bills introduced into the legislatures of some eighteen different States during the year 1901, as well as upon a personal study of a number of bills of an earlier origin. In its legal wording the Wisconsin bill is a model. (See Appendix.) For its excellence in this respect much credit belongs to Hon. E. Ray Stevens. Besides, it embodied the best thoughts and efforts of a number of other able men who were thoroughly conversant with the subject of their hopes. Its every section plainly showed the marks of the master mind of Governor La Follette, who for so many years has been an earnest student of the principle involved, and who, after having been chosen to the headship of the State upon the merits of that principle, strove to give the people the best that could be had.

[2] The following assemblymen were on the commitee: E. H. Steiger, E. Ray Stevens, W. W. Andrew, W. J. Middleton, L. N. Coapman, John A. Henry, J. C. Karel.

lowed the substitution of the united, instead of separate ballots, and the canvassing of the vote by one canvassing board instead of by separate boards for each party; the formulation of the platform by the state central committee, or in such manner as the committee saw fit, instead of by the candidates; the elimination of the sections relating to the primary election of presidential electors and to the election of delegates to national conventions; the insertion of a provision for a non-partisan ticket, and for the counting of a vote for a candidate running on some other ticket, for that candidate as a candidate on the voter's party ticket. With these and a few minor changes the bill went before the House, where it met with considerable opposition, which, however, was directed, not against specific provisions of the bill, but against the general principle of direct nominations involved. As an embodiment of that principle, the bill was, in the estimation of the writer, better than any of the numerous bills studied.

After a severe struggle, including an all-night session in the course of which probably the most disreputable public scenes which ever disgraced the legislative halls of Wisconsin were enacted,[1] the bill passed the Assembly

[1] The methods which were resorted to for the defeat of the bill are a matter of public record. To the ordinary citizen they must appear almost incredible. When the Assembly met on the evening of March 19 with the apparent intention to give the bill a fair and full discussion, the opponents of the measure strove to "kill" it by cutting off all debate through a call of the House, which was carried. Four times in the course of the night the friends of the bill attempted to raise the call, but failed by from one to two votes of the required majority of 51. Not until 6:15 the next morning was the call suspended, and the bill passed by a vote of 53 to 42. Typical of the reports which issued from the press on the following morning, describing the scenes of the all-night deadlock, are the following statements taken from the Milwaukee News, which will give the reader some conception of the character of the fight indulged in by the opposition. "The only member found (by the sergeant-at-arms in his search for

on a close vote, and was sent to the Senate, where the opposition was fatal on another close vote.[1] A referendum clause providing that the law was not to go into effect unless ratified by a majority vote at the polls, was then offered by the friends of the measure as an amendment of the original bill. The opposition senators voted this down. The supporters of the measure in the Senate then proposed a compromise, the Hatton amendment, which included in its operation all but state and congressional offices. This also was voted down. The greatest objection urged by the enemies of the bill as it was

absentees) was —— ——. Mr. —— —— was instructed by the convention which nominated him to vote for a primary election bill, and the charge was openly made when —— —— was brought into the chamber, that opponents of the bill were responsible for his unfortunate condition, the idea having been to prevent him from appearing in the Assembly to vote for the bill. Almost a scene was created once by —— —— (an opponent) attempting to prevent Senator —— —— and other friends of the bill from talking with —— ——." . . . "Some of the scenes during the early hours of the morning were a disgrace to the State. Liquor was brought into the capitol and several members, as well as one or two 'machine' senators who remained in the capitol to lobby against the bill, had several drinks more than were good for them before the night was over. One of the committee rooms was made a kind of liquor supply house, from which bottles containing liquid a good deal stronger than milk were rushed to thirsty members. Once Speaker Ray was obliged to call for order, because of the production of beer bottles by members on the floor." . . . "The federal office-holders' lobby remained on deck all night, and finally some of their members became so obnoxious in their efforts against the bill that Assemblyman —— —— raised a point of order, asking that persons not entitled to the privilege of the floor be barred. Mr. Ray immediately ordered all persons who had no right to the floor to the lobby." . . . "The assembly floor at six o'clock this morning was a sight to behold. Just in front of the first tier of desks was an empty bottle marked 'Hunter's Rye,' while the entire floor was a mass of newspapers and waste paper," etc. In short, witnesses of the all-night session declare that the opponents of the primary election bill on that memorable night did not attack the measure upon its merits, but strove to accomplish its defeat by use of money and drink.

[1] The Senate Committee on Privileges and Elections was composed of Hatton (chairman), Jones, Miller, Whitehead, and Martin. One of the most able and earnest speeches made in behalf of the bill in the Senate was that delivered by Senator Stout, his basic argument being that he favored the direct primary because it rested upon a firm belief in the wisdom, virtue and honor of the ordinary citizen, which he heartily indorsed.

passed by the Assembly, had been its wide scope; hence, they introduced two other substitutes known as the Kreutzer and the Hagemeister amendments, which were limited in their operation to the nomination of candidates for county offices. Both of these bills provided for open primaries, and substituted for the nomination paper a fee and an affidavit of *bona fide* intention to run for the office as stated.

The Hagemeister substitute passed the Senate and was sent to the Assembly. It was a bill of exceedingly slim proportions, containing only seven sections. Its limitation to county offices made it waste paper as far as the cities were concerned. It was not even a half-way reform, replacing, as it did, only one set of caucuses and conventions. By calling into operation all the election machinery which would have been required to nominate all officers of the State, it entailed an expense and involved a trouble out of all proportion to any possible advantages which might have resulted. By requiring a fee from candidates, it discriminated against the poor aspirants to office, and increased the difficulties of the minority party in getting good men to run, when defeat at the polls was almost certain. The cities, where reform is most needed, would have been left untouched. It was manifestly a piece of "machine" legislation designed to work harm to the cause of primary reform. The incompleteness and imperfections of the provisions would unquestionably have led to difficulties which would have discredited the cause, and would have postponed the day when the people should name their own candidates for office by direct vote.[1]

[1] Leading arguments of Hon. E. Ray Stevens in opposing the Hagemeister bill before the Assembly.

Upon these and other grounds the friends of direct primaries in the Assembly rejected the Hagemeister bill and framed a final and fair compromise, limiting the system to the nomination of all candidates for city and county offices, and for the members of the legislature. What was of even more consequence at that critical juncture was the application of the referendum principle to the adoption of the Assembly substitute. The act was to be submitted to the people of the State at an election held on the first Tuesday in April, 1902, and was to be in force only if a majority of votes were cast in its favor. This was pre-eminently a fair proposition to meet the objection of all those who claimed that there was no demand for such a law, or who had been made to feel uncertain or doubtful as to public sentiment. It removed all responsibility from the shoulders of those who opposed direct primaries, and gave them the opportunity, if they so desired, to prove their contention that the people did not want a direct primary law. Yet they voted down the compromise bill of the Assembly, with its referendum provision, and requested that body to reconsider its vote upon the Hagemeister substitute. The Assembly did so, and by a vote of 48 to 46 passed the Hagemeister substitute.

There now remained naught but Governor La Follette's signature. Those who knew him were not surprised at his ringing veto message "which excelled in intellectual vigor and moral earnestness any executive message which we have read in recent years." [1] In taking his position against the bill, the Governor set forth

[1] "Governor La Follette's Ringing Message," Outlook, May 25, 1901.

his reasons in a clear and convincing form. The Hagemeister bill, optional and imperfect as it was, and limited to county officers, was a mockery of the party's pledge "that all candidates for state, legislative, congressional, and county offices be nominated at a primary election upon the same day by direct vote." He reminds the legislators that "the declarations and promises of his party to the public" for which each of them individually stands "is a sacred public trust, and to its faithful execution as a man and public official he is in honor bound." He also suggests that "it would be difficult indeed to cite another instance in the history of the State where a great measure of such fundamental importance in government was more fully and clearly outlined and more generally discussed so long in advance.[1] There were no public expressions of significance to indicate any dissent from the platform as adopted at the state convention until after the organization of the legislature, when bold declarations were made that one branch was so organized as to defeat all primary legislation. Immediately upon the presentation of the Stevens bill "a systematic campaign of misrepresentation began to be waged. * * * An array of federal officeholders, joining with certain corporation agents, and the representatives of the "machine" in regular legislative lobby, moved upon the capitol, took possession of its corridors, intruded into the legislative halls, followed members to their hotels, tempted many with alluring forms of vice, and, in some instances, brought them to the capitol in a state of intoxication to vote against the bill."

[1] See p. 246.

The message then points out some of the gross deficiencies of the bill. "No time is fixed for the canvass of the vote, no duty imposed upon the county board to make it, and no provision is found by which it can be compelled to act" until the time fixed by statute for making the canvass of fall elections has arrived. "Thus, the offices would be filled by an election before the question as to who were to be candidates had been lawfully determined." The law, if enacted, would also have been inoperative because, according to the referendum clause, it was not to go into effect until it had been voted upon by all the people of the State at "the spring or municipal elections of 1902." "No such election is held in the city of La Crosse—one of the most important and populous cities of the State—in 1902;" hence, the electors of that city would have been denied any opportunity to vote upon the question, while there are probably other cities which would have been similarly disfranchised. "It is not competent for the legislature to exclude any electors of the State from participation in a proposed submission of a measure designed to have force and effect throughout the State." For this reason alone the law would have been unconstitutional even though it had received the Governor's signature.[1]

The veto of Governor La Follette brought to a temporary close what was probably the most turbulent and, in some respects, most unscrupulous fight ever waged in this country against primary reform. The veto rescued the State from the enactment of an imperfect piece of legislation which would have cast serious reflections

[1] For other illustrations of the imperfection of the proposed law, see the Governor's veto message of May 11, 1901, and also p. 253.

upon our legislative and executive departments, and would have made their action the subject of well-deserved ridicule. The defeat in the legislature of all honest efforts at pledged reform in defiance of the will of the majority expressed in the election, cannot but greatly aid in the struggle for better primaries which will continue with ever-increasing vigor.

In order more effectively to prosecute their campaign against Governor La Follette and the Republican party, the opposition elements in the State have organized themselves in striking resemblance to Tammany Hall, under the name of the "Wisconsin Republican League," which, while it presumes to represent the vital interests of the party, is really composed of self-constituted authorities representing the "machine" interests in the State. This organization now occupies sumptuous quarters in one of the finest buildings in Milwaukee, and has a large list of salaried employees, ranging from the highest to the lowest, besides paid agents and "workers" in every community. In imitation of Tammany methods, a systematic political canvass of the voting population of the State has been undertaken. Poll books have been prepared, the information sought being arranged under four heads: Voter's party affiliations, sure; voter's party affiliations, doubtful; voter's religion; language read. Where the voter is a Republican, he is further classified as a "sure Republican for us" or "against us," or as a "doubtful Republican for us," or "against us." As was so well demonstrated in New York, an organization of this kind, born for political control, possesses all the elements of a dominating power, and must be looked upon as a fearful menace to political liberty in this State. It is well for

the people of Wisconsin to remember that those who are most intimately acquainted with the political situation, declare the organization in its constitution, its purpose, and its action, to be the counterpart of the Tammany power in New York. The future of primary reform, as well as of tax and other reforms in Wisconsin, will depend largely upon the position which the people of the State take with reference to this highly organized and undemocratic power.

PART III

AN ANALYSIS OF THE MAIN ARGUMENTS FOR AND AGAINST THE DIRECT PRIMARY

CHAPTER I.

A GENERAL INTRODUCTION OF THE ARGUMENT.

We have arrived at the stage of conflict, and must now study the battle. Face to face there stand the champions of the direct primary and of the convention system. The field of struggle has already been outlined. We know the ground of the primary, as we know that of the convention, and while we watch the contest we may, upon the basis of the past, speculate as to its outcome. Merit, we believe, ultimately wins the people, hence we shall endeavor to weigh the virtue of the two ideas for which the champions in the struggle stand. They do not fight on even ground. The champion of the convention has an advantage over him of the direct primary. The former has but to fight on ground already his own; the latter must first fight for the ground on which he hopes to win. Since the odds are heavy against him, even the chance of a trial is obtained only with great difficulty, and rarely is attained on equal terms.

Defection in some of its important features, forced by compromise with the opposition, has been an almost uniform characteristic of direct primary legislation. Where the provisions are sound as far as they go, they often do not go far enough to form a complete system. In many cases, especially in the South and Middle West, the direct primaries have practically been left in the hands of the political parties (which generally means in the hands of the hostile party "machine," or "boss")

instead of under the protection of the State. Where this has been done, we must not look for the success of the system, any more than we need look for a hanging where the criminal is presented with a rope accompanied by the assurance that the State will protect him in his action should he choose to make use of it. Again, there are instances where the State and the party share in the control of the primary, and as in all cases of half-way measures only half-way results are attained. To give the direct primary principle a fair trial it is necessary to incorporate it in a complete legal system in which all details of operation are determined and safeguarded by law, and which is constructed upon the basis of the best facts attainable.

What the direct primary reform endeavors to accomplish is to give the people a better government than they at present enjoy. This it hopes to do by placing in office more uniformly honest, faithful, and capable men, who will be responsible in their official capacity to the people. We have to-day, in many of the departments of government, from the town up to the Nation, officials who are not the representatives of the people, but who are the creatures of a small group of men which has acquired the power of placing them in office. They are responsible, not to a body politic, but to a narrow ring of politicians, and are bound to perform their duties as public servants more or less according to the dictates of these independent "bosses," who, having made politics their business which is to yield them their daily bread as comfortably as possible and swell the profits of the interests which they usually represent, enter into the work with the spirit of private enterprise, issue their orders

for the promotion of private interests, and thereby turn the public official in a public office, into a private servant in a private concern. It is only when the private interests of the "boss" coincide with those of the public, that efficient government can reasonably be expected. But public and private interests are seldom identical, especially where the latter are in selfish, unscrupulous hands, and thus it happens that where political combinations control offices, government lacks proper efficiency. Public and private interests can, however, be made largely identical by expanding the small political combination through the admission of *all legal voters*, as representatives of the main private interests. Thus we obtain a body politic which governs itself, and which would therefore naturally tend to govern in its own interests, as it understood them. This is just what the primary reformer hopes to do.

It stands to reason that to improve our government where it has fallen into the hands of a few, we must once more place it in the hands of the many. Every voter must be given not only a nominal, but a real voice in government. The idea, therefore, of the advocates of primary reform is sound and reasonable. They desire to place the people in power, where combinations of men have ousted them. They hope to restore to every voter an effective vote, and *effective voting by all voters lies at the basis of good government.* A question however arises as to the method of accomplishing this purpose. Will the direct primary on which the reformers have so boundlessly staked their faith do what is expected of it? This is the real question at issue. Effective voting is what every patriotic citizen of this country desires, but

can it be obtained through the institution of a direct vote system?

In order to forestall any misinterpretations, and to narrow the discussion in answer to this question down to its proper sphere, we are now ready to make three assumptions: (1) That, since party government is necessary, party organization must be maintained; (2) That we are all agreed to grant to every legal voter a free and equal ballot which shall count one as the voter wishes; (3) That political conditions have been faithfully represented in Part I, to the effect that at present every vote does not count one at all, or does not count one as the voter wishes. These three assumptions will confine the arguments to the relative merits of the caucus and convention system, and that of the direct primary, considered purely as nominating machinery through which the voter is to be given an effective voice in the nomination of candidates to elective offices. Under which system will the winning political party place in office the best men? Since the machinery through which the party must act varies widely in the two cases, and necessarily greatly affects its internal organization and working, the first inquiry may well be limited to which system best maintains an effective party organization, or whether both do so, leaving the second question, which system provides the best nominating machinery through which a properly organized party may act in selecting the personnel of the government, to later discussion.

CHAPTER II.

PARTY ORGANIZATION UNDER DIRECT PRIMARIES.

Good party government depends upon good party action, and this in turn depends upon strong party organization. Without well organized parties, democratic government would be a farce. No institution can be tolerated which hampers the action or threatens the life of political parties. This charge is sometimes advanced against direct primaries, upon the ground that the mainstay of party life, the convention, is abolished. Whether this it true remains to be seen.

A strong party organization is characterized by unity of action. Its requisites are harmony of membership and mutual loyalty and confidence among its representatives in the public service, its chosen leaders, and its members. To-day these conditions often fail us. Where one-man-power in politics has attained any degree of prominence at all, there is a corresponding sacrifice of proper representation, not only in government, but in the determination of party organization, of its governing committees, and of its membership. This sacrifice is most pronounced in our cities, and in many cases, as in New York, is practically absolute. Where such conditions obtain, the first requisite of a permanently strong and healthy party organization is wanting—that of mutual loyalty and confidence between party officials and members. The party officers are not the choice of its members, but are the creatures of politicians. Party

membership is not determined by the wishes of the party, but by the Croker and Platt rings which are in control. Only "ward heelers," and voters willing to pledge themselves to obey the dictates of party "bosses," are admitted to its more active membership, while the great body of real, faithful partisans are entirely excluded from exercising any controlling voice in party action. Hence the second requisite of a strong organization, harmony of membership, is lacking. The absence of unity of action necessarily follows, so that in extreme cases under our present system, hardly a shadow of proper party organization remains. The "strong" party organizations which are often found in control of politics today, are but apparently strong. They are powerful, not by virtue of the enthusiasm of partisanship issuing from their members, but because they are in the relentless grasp of highly organized and narrow rings of politicians.

Under a direct primary system party officers can be chosen by direct vote, and being the choice of the masses of the party, there is no reason why the relation of mutual loyalty and confidence should not exist between them. Similarly, important questions of party organization and party membership could be submitted to a vote of the party at the primaries. This would insure justice in the membership rules, which would be further safeguarded by state regulations of how parties shall participate in the primaries. There would hence also exist harmony of membership, from which results unity of action—the sign of a healthy organization.

That the direct primary would prove a distinct improvement over present conditions of party organization

where "machine" politics obtains, can hardly be questioned. The incorporation in the Oregon law of thorough provisions for the popular control of party organization is highly commendable and of interest in this connection.[1] It is a feature which is distinctly in the van of primary legislation in this country, but seems to point the way in the right direction.

But even stronger disintegrating forces than are found in the "machine-controlled" party organization, are set free in the caucuses and conventions as a result of "machine" activity. At the primary or caucus it often happens that the party voter finds his wishes thwarted. He finds repulsive men nominated for local offices. He finds "machine" delegates elected to conventions and "machine" men put in charge of party business. In the convention, he finds offensive candidates named, instructions, if any, disobeyed, perverted, or sacrificed by proxy vote, platforms framed with open disregard of his desires. If in such cases the voter is sufficiently independent or finds it impossible to support "machine" men, he has but three alternatives; he may stay away from the polls on general election day, which experience shows he often does; he may stir up enough "anti-machine" feeling to cause a split in the party, thus compromising its success; or he may join the ranks of an opposing party in the hope of killing the enemy at home by supporting the enemy abroad. The second course shows the best spirit. It indicates strong partisanship and willingness to fight for one's rights. Voluntary disfranchisement, the first alternative mentioned,

[1] See p. 229.

shows cowardice and a deplorable lack of a proper conception of the duty of citizenship; while the third alternative bears little fruit. It leaves the "machine" in peaceful possession. Either one of these courses tends to destroy party organization, and to give birth to disruptions and dissensions which entirely defeat the purposes for which the modern political party exists.

Under the direct primary the voter feels that he has had an immediate and certain hand in performing all the functions of the party, and if his wishes have failed to win the day, he is ready to abide by the results of the larger numbers, for so firmly is the idea that the decision of the greater numbers at the polls must rule, implanted in the American mind, that the nominees of the primary will receive the united support of the party at the general election. It seems to have been a matter of general experience where the most advanced forms of direct primaries are in operation, as in Minnesota and Kentucky, for the defeated and the successful candidates to preserve a feeling of good fellowship, or to conciliate where differences had arisen.

At a convention, more or less personal collision is certain to occur. Great bitterness of feeling is easily aroused where all aspirants and their friends are gathered within four walls; where enemy and friend are at arm's length of each other; where in the height of conflicting emotions and desperate efforts at success, words are likely to pass which create permanent breaches, even between old friends. Suspicions of foul play are easily aroused where the feelings of the ambitious run high, as they do in conventions. As a result, dissensions within the party spring up, candidates play

into the hands of their opponents by fighting each other, and thus may compromise the success of their party. There must be peace at home before there can be strength abroad. Where the direct primary decides the nominations, defeated candidates feel that they have had a fair and open chance which proved that they were not wanted. Conciliation takes place more readily and party harmony is preserved.

As soon as the direct primary principle is applied beyond the confines of the locality, the necessity of promulgating a platform arises. It is claimed that the absence of a proper organ to perform this function under a direct primary system, together with other reasons, makes it impossible to apply such a scheme successfully beyond the confines of local political units; that there would exist no means of holding the party together on larger policies and principles; and that each candidate would stand upon his own platform, thereby confusing the voter and destroying the essence of the ballot. No primary election law has as yet been enacted covering the entire State for all offices, and dealing with the problem of formulating a party platform. A few laws embracing counties have touched upon it to some extent.[1] The Oregon law of 1901 provides that "propositions" of party policies and principles within the county are to be submitted to a vote at the primary.

A number of defeated bills have, however, proposed to solve the problem of a state platform. Among these may be mentioned the Stevens bill of Wisconsin as returned from the committee, which vested the power of

[1] See p. 230.

making a platform with the state central committee of the party; the original Stevens bill which gave that power to the candidates for state offices and for the legislature who had been nominated at the primary; the North Dakota bill which followed the state central committee plan of the Stevens bill; and the Colby bill of Michigan, which left the matter with a convention of delegates to be called by the party committee at least sixty days before the primary, and which provided that, in case of failure to call such a convention, the party candidates were to frame the platform.

These bills favor neither one nor the other scheme. In support of a platform made by candidates it may be said that it stands nearer to them, and that they are made more directly responsible for it. The candidates know public sentiment; they have studied public questions carefully, and may be given credit for honest efforts to touch the pulse of the people. Having framed their own platform, they are bound to feel a personal as well as an official responsibility for it, and are more likely to carry out its provisions faithfully than if it had been foisted upon them. It is claimed that a platform so framed is farther removed from the people, but the candidates who have just been nominated by the people ought to reflect their will as to platform principles with greater faithfulness than would delegates whose responsibility ends with the adjournment of the convention. As to the objection that a platform framed by candidates presents the anomaly of a platform framed after a nomination instead of a nomination upon a platform already drawn; that candidates are chosen before the policies and principles for which they are to stand

have been given definite, formal, and binding expression, it is answered that platforms framed in conventions are generally drawn before the convention assembles; that they are considered only by two or three "bosses" who contrive to be members of the "set up" committee on platform which accepts what has been prepared and reports it back to a convention, where without debate or deliberation it is hurrahed through by excited delegates eager to begin the battle for nomination. As to the candidates so nominated upon a platform so framed, it seems preposterous to claim that they represent principles or stand for declared policies of government. A platform so drawn can mean no more and no less to the candidates or to the people, whether it be adopted before or after the business of nomination has been completed. In either instance, it is a farcical expression of what is supposedly the delegated will of the people, which the *time* of its adoption can in nowise affect. On the other hand, candidates under a direct primary system will be strong enough to secure nomination only as they embody, represent, and express in their candidacy political principles and administrative policies which command confidence and support with the members of their party. These policies and principles will be the real issue in the campaign preliminary to the primary election, and their declaration and explanation will be the constant aim and effort of every candidate in the prosecution of his personal campaign. In other words, it will not make so much difference how the candidate spells his name, as what his candidacy signifies—what it stands for and represents. The policy will take precedence of the man. This is one of the strong reasons for direct primaries;

that principles will count for more than men; that candidates will no longer be chosen because they are "wanted" by this interest or that boss, but because they are the exponents of ideas essential to good government. Hence, the primary election which results in their nomination is a specific declaration of the party upon the principles to be incorporated in the platform. The determination of that matter in the minds of the party has been made in fact before the polling of the vote—the marking of the ballot, casting it and having it counted, is but the recording of the will of the party already determined. It remains only to express the principles adopted by the party in the nomination of the candidates in plain direct terms suitable for a platform. Who is better equipped to do that than the candidates whom the party has chosen as the best living expression of those principles? Who will be more anxious that the platform should reflect the will of the party that has nominated them, and who will be more faithful in fulfilling the promises so made in the platform, than these candidates?

The promulgation of a platform by the state central committee has been suggested to meet the objection of a post-nomination platform, and maintains the present order of "platform first," but most of the other objections remain. The convention of candidates is a more immediately representative body than is the party committee as determined by the recency of the election. The party committee is also likely to be less capable, honest, and unprejudiced than a body of newly nominated candidates, who are intensely interested in public questions

and who have been closely watching every stir and breath of public opinion.

Colby's idea of a platform framed by an especially elected delegate convention is theoretically a good one. It has all the advantages of the state central committee plan, and in addition, brings the platform about as near to the people as well can be under a delegate and convention system. Under pure conditions of politics the convention is undoubtedly the ideal place for the promulgation of a platform, but it must be remembered that with politics such as we have to-day lurking dangers will beset the doors of any convention, and will tend to pervert its functions, especially in those localities where reform is most needed. A convention such as Colby suggests would be an irresponsible and more or less uninterested body. It cannot be called upon to stand by its platform, but imposes certain policies and principles upon an entirely different set of men, nominated through an entirely different agency. There may be considerable reluctance among candidates to accept such a platform. Any statement to that effect by a candidate might incur the suspicion and distrust of the public, and thus tend to defeat the general endorsement of the platform.

If the platform is to be framed and promulgated prior to nominations, then it seems that a proper organ for its formulation is one in which there is incorporated the principle found in our modern convention system *that the same body which nominates the candidates must have a controlling influence in determining the most important features of a platform upon which those candidates are to stand.* Harmony in case of a direct vote system would seem to be completely secured through

the combination of these two functions in one organ—the body politic. This can be accomplished through the application of the referendum principle by vesting in the people the power of a veto over the main issues in a platform which is to be drawn by the state central committee of the party somewhat upon the plan by which "propositions" of party policy or principle are submitted to a vote at the primary under the Oregon law of the present year. The submission of only main issues which the voter has well in mind would avoid confusion, and would remove the objection that the masses do not possess sufficient knowledge and insight to pass upon the details of a platform intelligently. In order further to clothe the voter with the consciousness of power, the possibility of having any particular details submitted upon petition might be incorporated.

Such a plan would meet the objection of the irresponsibility of the state central committee in the making of a platform. The power of a veto, by keeping open the possibility of its exercise, would have a negative, rather than a positive effect. It would compel, rather than dictate. The right to force the submission of particular propositions would greatly increase the reserve powers of the voter, and would guard against deceit and chicane, in the submission of issues by the committee. The people and the candidates would have greater confidence in the platform as well as in each other. The platform, just as the candidates, would be brought nearer to the people. There would be an ante-nomination instead of a post-nomination platform. Government in accordance with such a platform, would be in accordance with the latest possible expression or confirmation of

policy by the public. The uncertainty introduced into the platform through a possible exercise of the veto power, can in no way affect the candidates, since as public officials they pledge themselves to act in harmony with the latest principles which their party may have affirmed, whatever these may be. Every voter would have the chance of two effective votes upon the question of governmental policy as upon that of candidates, one at the primary and the other at the general election. Can the voter be entrusted with this power? Does he possess the necessary integrity and intelligence? There are voters who can be corrupted, or who will vote ignorantly, but he who answers the question in the negative, in essence declares that more corrupt than uncorrupt votes would be cast; that more ignorant than intelligent ballots would be polled; in short, that democratic government is impracticable and impossible to-day. This assertion requires no answer here, or anywhere.[1] The writer believes that some such scheme as has been suggested would probably effectually solve the platform problem, and give to the party a better platform than is possible in most cases under the convention system which the direct primary would displace. In this respect it therefore also seems possible to preserve an efficient party organization under a direct primary system.

Party apostasy will be greatly reduced under direct primaries. At present, where "machine" candidates have been set up, all that remains to the voter is to waste his vote on the "machine," or to forsake his party entirely. In case of the direct primaries this is not necessary; he has two vetoes over the candidates running. He

[1] See p. 77.

can first at the primary help vote down undesirable men in his own party, and aid in the endorsement upon his own ticket of good men running on other tickets, and then, at the general election, there will exist no need for deserting his party in order to vote for good men, or if he sees fit to do so, he can again exercise his veto power over the lists of his party. The perfect freedom of the voter at the primary will tend to keep the party intact at the general election, and will pave the way for success.

Since under a complete direct primary system intrigue, corruption, bribery, and intimidation will be greatly reduced, parties will be able to win out only by virtue of their issues, and not through their superior organization; party leaders will no longer rise to power by following the steps of a Croker, but will have to rely upon personal merit.[1] Thus there will come about a greater confidence in party activity, and a truer devotion to party leaders, which will build the fabric of partisanship close and strong.

It may be answered, then, to the question put at the outset: Will the direct primary, or the convention system, best maintain an effective party organization, that where the "machine" rules, the direct primary is superior in maintaining an effective party organization. It provides the party voter with representative party committees. It gives him a platform to his liking. It enables him to vote for the men of his choice. He is satisfied and it strengthens his party affiliations. Party organization, party issues, party spirit, party candidates, will, under such conditions, be of a higher, better, and truer quality than under a convention system.

[1] Prof. John R. Commons, Report of National Conference on Practical Reform of Primary Elections, 1898.

CHAPTER III.

MINORITY NOMINATIONS UNDER DIRECT PRIMARIES.

We are now ready to consider whether the direct primary or the convention system furnishes the best nominating machinery through which an effectively organized party may act in the selection of its candidates for office. For the sake of clearness this question may be discussed under three heads: (1) Under which system will the men nominated be more thoroughly representative? This involves the arguments of minority representation; of heavier voting at the primaries; of the power of corporations and of "machines"; of the geographical concentration of candidates; of the rural versus the city vote; of the double veto over candidates; and of the power of the press and deceptive journalism. (2) Under which plan will there be greater equality of opportunity to enter the public service, or are particular classes favored by one or the other system? Consideration will be made of the poor man; of the rich man; of the business man; of the man of leisure; of the lover of notoriety; of the practical politician, etc. (3) Under which system will a higher grade of men be put in office?

In the first place, will the men nominated be more thoroughly representative or not? Will they actually, or only apparently, represent a larger or a smaller number of voters? The claim against the direct primary is that minority nominations would be increased; that a larger number of men would run for office, and the vote

would hence be scattered among numerous individuals. The easier the law makes it for an aspirant to office to get his name put on the primary ballot, the more likely is it that he will run. Direct primary laws differ widely as to such requirements. In the southern States, and generally wherever the primaries are a party expense, any candidate may have his name printed upon the primary ballot, if he has paid his share of the expense, as assessed by the party executive committee.[1] Such provisions have, however, been extremely unpopular with candidates. In other cases an affidavit of *bona fide* intention to run is required, and the deposit of a definite fee fixed by law either as a uniform sum, say ten dollars;[2] or as a certain percentage of the salary of the office for which the candidate runs;[3] or a definite sum graduated according to the importance of the office.[4] Another method is the filing of a petition or "nomination paper" without any fee,[5] while in still other cases both nomination papers and fees are required. The latter method was employed under the Hennepin county law of Minnesota, and was incorporated in the Oregon law of the present year. In both cases the deposit of a fee of ten dollars was required, in addition to the filing of a nomination paper signed by at least five per cent. of the voters of the party in the proper political division.[6]

[1] South Carolina, Georgia, Florida, Alabama, Kentucky, Ohio, Indiana, Tennessee, etc.

[2] Missouri, and Minnesota under the law of 1899 in addition to a nomination paper.

[3] The Maryland bill of 1901 and the North Dakota bill of the same year required as a fee two and one-half per cent. of the salary of the office, and the Colby bill of Michigan but one-half of one per cent.

[4] Minnesota and Michigan laws of 1901; Hagemeister and Kreutzer bills of Wisconsin.

[5] Indiana law of 1901, and Stevens bill of Wisconsin.

[6] Similar provisions are found in the Illinois bill of 1901.

The question now is, which of these methods will bring out the best men. The deposit of an oath and a ten-dollar fee is a very simple process, and will be found convenient by honest and capable men of means who have the ready cash, and who object to going out before the public to solicit names. But it would prove a serious handicap to a poor man of ability to whom ten dollars is a considerable item. It encourages the politicians to put up numerous "straw candidates," bogus men who will scatter and divert the vote. It creates "scalawags" who pay their fees and put up sham runs, only to be bought off by those candidates whose vote they would most largely cut in upon. It urges the "local candidate," whose strength lies within a narrow area, upon the ticket. From all these sources, therefore, of "straw candidates," "scalawags," and "local candidates," the requirement of a fee alone would tend to increase the number of undesirable candidates; to give rise to more decided minority nominations; and to favor the man of means. The imposition of a fee also discriminates against all weaker parties, in that good men will hesitate in coming forward and paying their fees when the possibility of success is slim, or defeat inevitable.

On the other hand, the requirement of a "nomination paper" signed by a certain number of voters would not discriminate against the poor man. It would be impossible for the "machine" to put up "straw candidates." It would exclude "local candidates" who could not get a sufficient number of signatures beyond the narrow limits of their popularity. There would be no money in it for "scalawags." It would defeat the aims of these political parasites by making it impracticable

to waste time and money in obtaining signatures for the uncertainty of being bought off at a sufficient premium above the expense involved to make it worth while. It would bring the candidates in closer touch with the people, and would arouse a more general and a deeper interest in nominations.

Objection is made against the use of nomination papers upon the ground that it compels the candidate to go out begging for an office; that it is a repulsive and disgraceful undertaking against which the honest pride and self-respect of a conscientious man rebels; that it encourages "pestiferous demagogues," and brazen-faced men of a lower type of character, who love notoriety, and who glory at the sight of their names flaming out in the wide universe, to court the public favor, and to get chosen to office; that it excludes the busy man of capacity and energy, whom lack of time does not permit to fool away days just for the sake of holding office; that after all, signatures may not mean much, since they can be bought with beer, cash, promise, or advantages of one kind or another; that men may sign for pure reasons of friendship or favor, or "to get rid of the fellow."

To say that by forcing a candidate to go out soliciting subscriptions for a nomination paper, the man is required to seek the office, instead of the office seeking the man, is but to voice a flourishing aphorism which "soundeth well but reasoneth not." Modesty is to be encouraged everywhere and at all times, and nowhere more than in politics, but by the inevitable law of necessity men must come forward and present themselves as willing to serve the public, and then let the people decide as to their fitness. Good men would rarely get a chance

to take office, if they were to wait until the people "discovered" them, and drew them forth to serve. A man whose modesty forbids him to come forward with a dignified and manful assertion of a "God given right," to declare his intention and willingness to hold office, and to take the legal steps which lead to public honor, does not deserve such an honor under any system of nomination. It is the man who seeks the office who is getting it under the present system, who got it in the past, and who must always get it. It is he who has most friends pushing him in the caucuses and in the convention who wins out. It is true that at present it is not necessary for a candidate to go out himself. He may leave the conduct of his campaign to friends or to professional politicians. But what objection is there to his going out himself as far as this may be necessary, when in doing so he is but complying with a good law. If it is no disgrace to hold office, then it can be no disgrace to wish to hold office, and to declare that wish in accordance with law.

Moreover, in our own State of Wisconsin nominations for the high offices of judge of the supreme court and judge of the circuit court have for years back been made by petitions circulated throughout the State without any lowering of the good character and high ability of the men who compose our supreme and circuit courts. If it is no disgrace—and the idea that it is does not seem to have struck anybody in particular but demagogues—for candidates to a seat on the supreme bench, to solicit signatures to petitions, then it certainly ought not to be such for any other position in the gift of the people of the State. Undoubtedly many good men who refuse to

run for office at present because of the disreputable and suspicious machinations which surround so many nominations, and cast their dark reflection upon the nominees, would be glad to come forward and file their nomination papers in accordance with law.

The use of a petition instead of a fee would also remove all discriminations against the weaker parties. If anything, it would favor the weaker party, in that the number of signatures required decreases with party strength, and eases the way to a nomination. It would be pre-eminently fair to parties, as well as to candidates, in that it would reduce money distinctions and party superiority to a minimum.

The practice of requiring both fee and petition, while it seems to have met with considerable success, does not seem as expedient as a petition alone. It is to be questioned whether the advantages arising from the possible prevention from candidacy of weak and fraudulent men through a fee, would counterbalance the disadvantages of a discrimination against the poorer candidates as well as against the weaker parties. If the fee is exacted as a matter of state economy, it cannot be defended very well, for the State would be taxing a certain class (its prospective servants) in the exercise of a right (to run for an office) which is essentially the initiatory step in the service of all the people, and which in case of defeated candidates, takes the form of a pure sacrifice to public interests that ought not to be demanded. The expense of conducting a primary election is essentially a part of the expense of conducting a general election,[1]

[1] In Spier v. Baker, 120 Cal. 398, a primary election was declared to be "an election authorized by law," hence coming under the Constitution. See p. 374.

and this, in turn, is a part of the necessary expense of government, which, as we all admit, must be borne by all the people through the equitable taxation of *all* interests protected, and not by a particular class. Upon these grounds it seems that a provision in law requiring a fee, the express purpose of which is to help defray the expense of holding a primary election, might be declared unconstitutional, while if its express and ruling purpose could be proven to be that of excluding the candidature of weak men, it might probably stand.

We may now turn to specific facts in the case. Do direct primaries increase the number of candidates? And how does the requirement of a fee, or a petition, or a fee and a petition, affect their number? In Jackson county, Kansas, where a fee alone is required, twenty-seven candidates ran for eight offices in the primary of 1895, which is an average of three and a half candidates for each office. For one office, that of sheriff, there were nine candidates,[1] so that the average for the other seven places was about two and one-half.

At the direct primaries of Cleveland,[2] Ohio, in 1898, where only petitions were required, but twelve candidates ran for six offices, or an average of two candidates per office, showing that on the basis of averages it was even an all around *majority* election. Only one candidate ran for each of three offices, and all three received the full party vote. For one office there were two candidates, the winner receiving seven-ninths of the votes; and for another, three, the winner obtaining almost

[1] The winner had a decided lead, and at the ensuing election received the full party vote, showing that a complete reconciliation had been effected.

[2] Ward 19, precinct A.

three-sevenths of the votes. In other words, minority nominations were made in but *two* offices, and there only by a few votes.

At the Hennepin county, Minnesota, primaries held September 18, 1900, under a system where both petitions and fees were required, thirty-nine candidates ran for twelve offices, excluding the fifteen city offices, for which there were thirty-four aspirants. The former averaged three and a fourth per office, and the latter but two and one-fifth. Out of the first set of twelve offices, there were six majority nominations, including member of congress, county attorney, county treasurer, county surveyor, coroner, and judge of probate. More remarkable still was the result in the city primaries, where out of fifteen offices, *twelve* majority nominations were made.

That majority nominations are common under direct primaries has also been demonstrated by long experience in South Carolina, Mississippi, and Lincoln, Nebraska, where, if necessary, second primaries are held to secure majority nominations, and the vote is confined to the two candidates for each office who received the highest plurality vote at the first primary. It has been ascertained on good authority, that second primaries are seldom necessary, and that the provision is satisfactory, although candidates with justice oppose it, because of the expense involved.

The experience in Wisconsin in the nomination of judges by petition also goes to prove that the number of men who try for nominations is by no means greatly increased where everybody otherwise qualified has the privilege of being voted for at the election after filing

the properly signed petition. "The positions as judges are very desirable ones, and many men wish the honor, yet there are seldom over three candidates at any such election." [1]

But even though we concede what past experience with direct primaries in many cases seems to disprove, that the number of candidates in the field would be increased, it can by no means be concluded from this, that plurality nominations would be more pronounced, or that the successful candidates would more frequently fail of a majority, or represent a *smaller minority* than at present. Even though we admit that where to-day there are three candidates running for an office there would be four or five under a direct primary, the successful candidate among the latter would not necessarily represent a smaller constituency than does the winner among the former, for experience has shown that the turn-out of voters is so much larger at direct than at indirect primaries, that the *actual number of votes cast* for the winning candidate would generally be very much greater than that which would be cast for a candidate under the present system. In other words, the increase in the number of voters who attend the primaries would more than compensate for any possible increase in the number of candidates.

That the direct primaries do arouse a more general interest, and draw a larger attendance at the polls, seems to have been found almost universally true. At the Scranton county Republican primaries of 1900, over 14,000 votes were cast, which is within 1,000 votes of

[1] Address of W. D. Corrigan, Waushara Co., Wis., before the Wisconsin legislature in 1901.

being the total Republican strength of the county.[1] In Cleveland, Ohio, under the convention plan, 5,173 votes were cast at the Republican primaries, in 1892. The next year under direct primaries 14,123 votes were cast; in 1896, 23,965; and at the spring primary in 1899, 28,000. All this in spite of the fact that the primaries were not held on registration day, which would undoubtedly have increased the turn-out. Even if in 1893 the number of candidates in Cleveland had been *double* what it was under the convention system in the preceding year, the actual number of votes represented by the winning candidates would still have been much larger in 1893, since almost three times as many votes were cast at that time.

In Louisville, Kentucky, the vote in the Democratic primary is generally almost equivalent to the entire Democratic registry. "On one occasion when only about 22,000 Democrats registered as Democrats in the regular registration, and there voted about 19,000 persons, ninety per cent. of the Democrats voted in the primary." [2] In Minnesota "the question of attendance was settled forever" by the fact that over 32,000 people voted at the first direct primary held in 1900. This was more than the entire vote cast at the preceding election for governor. Even the most ardent advocate of direct nominations had not anticipated such an enormous attendance. If there is any absolute statement which the writer is ready to make respecting any argument bearing upon direct primaries, it is that the direct vote sys-

[1] Arthur Dunn in "Messenger," South Wayne, March 7, 1901.

[2] McDermott of Kentucky at National Conference on Primary Election Reform. N. Y., 1898.

tem does bring out a very much larger vote. Everywhere facts confirmatory of this contention have been found. The significance of this becomes more profound when we recall that in some of our cities less than thirty per cent. of the voters go to the polls, and in twenty-four of the larger cities barely half of the voters vote; that the stay-at-home vote in Pennsylvania increased from 70,000 in 1888, to 610,000 in 1895; in New York from 75,000 to 510,000; in Massachusetts from 80,000 to 230,000; and in Ohio from 40,000 to 180,000.[1]

In the face of these figures, the force of the contention must be admitted, that even though we concede, what facts in many cases contradict, that the number of candidates is generally greater under direct primaries than under the convention plan, it does not follow that the actual number of voters represented by the successful candidates is smaller than under the present system; but that with the great increase in the total vote cast at the primary, our nominees will tend to represent a larger constituency; minority nominations will be less pronounced; *the candidates will be more representative men.*

The argument of minority nomination is sometimes advanced as though it applied only to the direct vote system. It must be remembered, however, that the days of majority nomination or election as required by law, have long passed.[2] The time was, before the development of our present nominating machinery, when our forefathers required a majority election, and balloted

[1] Pomeroy, Eltweed, Doorway of Reform, Arena, April, 1897.

[2] Majority nominations are required in South Carolina, Mississippi, and Lincoln, Nebraska.

a goodly number of times to attain that result. But that age has gone. Life and necessity have demanded new methods, and to-day minority nomination would probably be found more frequent than that by the majority if the investigation lent itself to statistical research. Where the "machine" controls politics, minority nominations of the most despicable and emphasized form prevail. We have it in the caucuses, where "machine slates" are carried upon preconcerted plans. We have it in the conventions, where votes are bought and sold; where the wishes of the people are ignored, and delegated votes are traded out to him who offers the most in return; where a "machine" chairman presides, and carries nominations for the politicians by his perception of the volume of sound when the vote is taken; where a "dark horse" of whom the people had not heard, and whom the delegates do not know, is sprung by some political orator, and nominated in the midst of frenzied excitement—where such proceedings obtain, we need not listen for the voice of the people. It is lost—drowned out by a narrow circle of shrewd politicians. Can there be worse minority nominations?

It is sometimes argued that at conventions delegates have a first and second choice, and that nominations are by majority. The first and second choice is a most fruitful source of "trades," while the majority vote is by no means always an indication of the real wishes of a majority of the party. *The delegates generally vote to get a majority.* One writer declares the direct vote system impracticable because it allows minority nominations.[1] These minorities, he says, result because

[1] How to Reform the Primary System, Arena, June, 1897.

"the voter casts his ballot in the dark without knowing the reasonable probability of the result." In other words, he regrets that the voter, under such a system, cannot foretell the result, and then vote for the sake of a *result,* for the sake of a *majority,* instead of for the man. This, he goes on, can be accomplished at a convention where "the paramount purpose is to get a majority!" There "enough of the future can be foreseen to guard against weak nominations," and delegates are free under a "second choice" to jump into the "band-wagon" with the "head man" and thus help make up the "indispensable, and much desired majority." Such majorities mean nothing, and at best but arouse the suspicion of defeated candidates and of the thwarted people. Far better is the minority nomination at the direct primary, where voters and candidates know that their strength is represented in the results, and that they have been squarely beaten in a fair fight.

In our elections, also, minorities frequently rule. In Wisconsin, Governors Rusk, Hoard, Smith, and Peck were elected by a minority which was from 1,700 to 10,000 votes short of a majority. "All the presidents of the United States since Grant, saving alone McKinley, were elected by a minority vote."[1] Here is proof that after all minority decisions are the rule rather than the exception under our present system, and cannot be advanced as an exclusive argument against the direct vote system. This fact of minority nominations must be looked upon as an unfortunate but irremediable condition of American politics, which is often greatly

[1] Address of H. W. Chynoweth before Joint Committee on Privileges and Elections.

aggravated by the convention system, and which will tend to be ameliorated by giving every voter a direct voice in nominations.

The elimination of minority nominations is very desirable, and might be attained through the expression of a first and second choice [1] where more than two candidates run for office; or by a majority nomination through a second primary election. The second choice method is very simple and effective and deserving of a trial. Where there are more than two candidates, the voter places the figure "1" opposite the name of his first choice, and a "2" opposite that of his second choice. If no candidate receives a majority of first choice votes, then the one receiving the largest number of first and second choices becomes the nominee, or under the Remsen method of canvassing the returns, the one who *first* receives a majority of first and second choices. The canvassing of the votes would not be as complicated or as troublesome as a first thought might suggest. There is a tendency to view with suspicion results where the possibility of mathematical jugglery seems to enter, but there really is no good reason why returns should not be accurately and honestly made in a canvass involving some additional figuring.

The simplicity and economy of the Remsen scheme recommend it very highly. If no candidate receives a first choice majority vote, then the ballots cast for the lowest candidate on the list, are assorted with reference to second choices for the remaining candidates. If none then receives a majority of first and second choice ballots

[1] Suggested by Remsen, in "Primary Elections;" by Gov. La Follette, in his message of January, 1901, and others.

a similar assortment of the ballots of the lowest remaining candidates is made on the basis of second choices, and added to the votes of the other candidates, and so on until some candidate has a *majority of first and second choices.* For example, the first choice canvass gives A seven votes, B twenty, and C eighteen. Since no one has a majority, the ballots cast for A who is the lowest candidate on the list, are sorted for second choice, and it is found that six give C a second choice, and one, B. This gives C twenty-four first and second choices, and B twenty-one, and hence gives C the nomination.

It will be noticed that, under this method, it generally will not be necessary to canvass the entire second choice vote in order to get at the result. It prevents the lowest candidate on the first choice canvass from getting the nomination on second choices. It gives the first choice vote a *greater importance* than the second, which is not the case when the candidate who gets the *largest majority* of first and second choices is nominated after a canvass of the *entire* first and second choice votes cast. It gives the candidate most desired by most of the voters the nomination.

Another way of overcoming minority nominations, is by requiring the holding of second primaries at which only the two highest candidates for those offices, for which no majority nominations were made, are to receive votes. In three States, South Carolina, Mississippi, and Nebraska, this method has been used. In Mississippi the majority rule applies unless by previous agreement of all candidates a plurality vote is to nominate. It has several disadvantages over the second choice

plan. It is not as economical. It consumes much time. It makes much trouble, and unnecessarily increases the voter's duties. And finally, the choice at the second primary is not free, but is limited to *two* candidates. All the inconveniences of a second primary might be avoided by allowing the voter to express his second choice at the first primary.

CHAPTER IV.

THE "MACHINE" AND THE CORPORATION UNDER DIRECT PRIMARIES.

As long as politics is politics and men are men, there will be "pestiferous demagogues," "professional politicians," "political machines," "bosses," "rings," "heelers," and all the other instrumentalities employed for the concentration of power in politics and for the control of political activity. The question is, under what system of nomination will these forces of evil be least active and their political power most nearly eliminated. It is claimed that the direct vote system does not deprive the "machine" of its power, and that it gives corporations a greater influence over nominations than they possess under the convention. Before going into the details of this argument it may be well, for the sake of clearness, to take a general view of the relation which the "machines" and the corporations bear to politics, as well as to each other.

The corporation, unlike the "machine" with which it co-operates, exercises most of its direct influence in politics after election rather than before. That this should be the case is natural. Both of these organizations act in self-interest. The "machine" tries to win false glory and make money primarily out of politics; hence, it aims at the control of our nominating and election machinery in order that it may sell its power of placing men in office, or may gain direct access to the public treasury. The corporation aims to make money primarily out of

some particular line of business, and only attempts the control of political action where an effort is being made, or is to be made, by the public through some department of government to interfere with its interests, its profits, and its free operation.[1] Corporations, therefore, have no incentive to enter politics before election, except where it is known that certain officers through whom public control is to be exercised over them, or who may serve them by enlarging their special privileges, are about to be elected. It is but natural that they should then strive to secure the election of men who are favorable to their interests. But even this does not always follow because of the greater convenience and economy with which the necessary number of public officers may frequently be corrupted after election, as in the notorious instance of our legislators. This work of corruption is greatly facilitated by "machine" politics which plays into the hands of corporations through the election of weak men. The relation between corporations and "machines" is in many cases so close as to make a distinction between the corrupt activities of the one and of the other

[1] The theory which explains the interference of corporations and trusts in politics is clearly set forth by Prof. R. T. Ely, in "Monopolies and Trusts," page 259. "The individual and social benefits of private property come largely as the result of a free hand in its management. But in the public control of private property, we retain private property, and yet take away from it that measure of control which is one of its natural incidents. It is a very serious question whether these two antagonistic principles can thus be reconciled. One inevitable result is a struggle of interests, with consequent political corruption and class arrayed against class. Those whose private property it is attempted to control are bound to resist the attempted control, which, however just it may be, they will regard as unjust; and to resist it means to enter politics in order to control those agencies which are designed to control them. In this way we have the most powerful classes using politics to promote their private ends." It may be added that corporations often are not *forced* into politics to resist attempted public regulation, but that they take the aggressive and *seek* the control of legislation for private ends.

extremely difficult. However, it is undoubtedly true that in general, the "machine" lays the foundation for further corruption by corporations through the election of weak men.[1] Hence, it is our political system which enables corporations and trusts to exercise baneful influences in politics that we must condemn, rather than the corporations and trusts which avail themselves of the opportunity offered, while acting under a most natural impulse of self-interest. It is not alone the wickedness of our great American business interests, but the wickedness of American politics, and the weakness of political institutions, that lies at the bottom of our corrupt corporation power in government. The remedy is not found in the destruction of trusts and the maiming of corporations, but in the improvement of our methods in politics and the furtherance of a better understanding between the public and our large corporate interests.[2]

The corrupt influences of corporations in politics to-

[1] Jencks (J. W.), The Trust Problem, p. 193.

[2] An illustration of this is found in a proposed system of advisory councils in railroad administration through which the public may be brought into a better understanding with our great railroad corporations. The aim of the suggested plan is: "to represent all the varied interests of our population *in an advisory capacity* in the conduct of our railways. These councils are to be clearing-houses of information, through which the railways and the public will learn to known each other's interests better, and through which the material interests of both of these great parties will be built up in accordance with principles of justice and equity. Every attempt to interfere in the purely business management of a railway should be resisted; but every attempt on the part of a railway to disregard the just rights of the public should likewise be promptly checked and thoroughly ventilated in the councils." . . .

"The council system, as proposed, fits into the present order of things. There is nothing radical or disorganizing about it. It simply aims to bring together into one harmonious system the various isolated independent efforts which have long been made by many railways in the United States and by private organizations. It aims to do systematically and well what is now attempted without system, in a manner more or less one-sided." Prof. Balthasar H. Meyer, "Advisory Councils in Railway Administration," in Annals of the American Academy of Political and Social Science, Vol. XIX, p. 74 (Jan., 1902).

day are greater than in the past, not only because there are more and larger corporations, but because politics concerns itself more with these corporations and because these corporations, at present, concern themselves more with politics. The modern era of industrial progress is an era of organization, of consolidation, of concentration. Combinations of capital for the protection and promotion of private interests representing millions of dollars are being consummated every day. So powerful are these interests in many cases as to threaten the general welfare and to demand the intervention of the State, which, as was seen, is always desperately resisted. Attempts at judicious public regulation of great corporate interests are repeatedly being frustrated, it is true, by the corporation agent's subtle money power, but the remedy is not found in the prosecution of a foolish war of extermination resulting in the crippling of corporations, which take a most natural advantage of the weaknesses of our political system, but rather in the improvement of our machinery for the selection of public officers and in its adaptation to the severe requirements of modern progressive life. The money king has come to stay. He cannot be destroyed and must be subjected.

The claim is made against direct primaries that they will give corporate interests considerable power, even to the extent of dictating nominations; that instances may occur where nominations are effected by bare pluralities, and where a comparatively small number of votes may decide one way or the other; that a corporation may possess the decisive votes, since it has the money, the "backing," and may control a large number of employes whom it can secretly, quickly, and thoroughly

organize in favor of some candidate through the threat of being "put out of a job." Admitting the bare possibility of dictation, numerous limitations to such a corrupt exercise of power are at once apparent. There must be an unscrupulous corporation willing to make the attempt. There must be a sufficient number of employes so scattered in the various election precincts in which they are registered and in which alone they can vote, to make their ballots decisive for the particular office for which dictation is attempted. There must be the right kind of a candidate, and a sufficiently small plurality. A closed primary system of voting requiring a declaration of party affiliation, must be in operation so as to enable the corporation to hold its employes responsible for their vote. Under an open direct primary system where secret balloting is allowed, dictation would be out of the question, since it would be impossible to tell how the voter ballots. With greater ease can a nomination be dictated under the caucus and convention system, where upon preconcerted plan the employes can "pack" a caucus, control its action, and elect delegates to suit. It is apparent, therefore, that even though a corporation should desire to dictate a nomination, it could not do so at all under an open primary system, and could do so only in rare instances under a closed primary system.

But even the desire to dictate a nomination would generally be absent. It was probably made plain in the opening discussion of this chapter that corporations do not aim at "little game" in politics. Their object, where they enter politics at all, is, as has been pointed out, to resist public regulation, or to secure the enactment

of special legislation for the promotion of their private interests. This cannot be accomplished through the dictation of a single nomination here and there. It requires the control of an entire legislature, which, it seems, would be utterly impossible through the dictation of plurality nominations under the most favorable conditions. Any objection to direct primaries upon the ground that they increase the power of corporations in dictating nominations appears preposterous in the light of reason, and is undeserving of serious reflection. In no way, does it seem, can this argument be considered of determining importance in deciding the practicability of nominations by direct vote.

It is also claimed that the direct vote system does not deprive the "machine" of its power, but enables it to concentrate its vote upon one candidate, and to nominate him—probably by a bare plurality vote, while the opposition to "machine-rule" is divided among a number of candidates. Possibly there might be cases where this could happen, but in order to succeed, the "machine" would have to deceive a great mass of voters by secret, underhanded means, because the divulgence of the plot would put the voters on their guard, and would defeat the attempt. Proper secrecy would be difficult to maintain because of the large number of persons involved who are neither the moving "machine" spirits, nor their cringing "heelers," but auxiliary voting material which must necessarily be brought in if the attempt is to be at all successful. It requires more than a narrow active clique, such as could easily control a caucus, or a convention, to control a primary election, because at the direct primary, *organization*, which to-day wins, would count

for little. It is numbers, *actual votes,* which alone could win the day in the face of opposition which has an equal chance. If the "machine" attempts an open fight, it exposes itself to counter combinations, and almost certain defeat, as was demonstrated in Scranton, Penn., in Lincoln, Nebraska, in Cleveland, Ohio, in Louisville, Kentucky, in Minneapolis, Minnesota, and elsewhere. The direct nomination records show that "machine" candidates have almost invariably been turned down at the polls when an open fight was made.[1] To deceive the public is difficult. "You may fool some of the people some of the time, but you cannot fool all of the people all of the time."

"Machine" politics is aided somewhat by the fact that the lower classes, from which the politician draws his main strength, have fewer preferences among candidates, and are more united in feeling than the higher classes, out of whose ranks the candidates come, and who are more apt to scatter their vote among a number of men, for personal reasons, sentiment, financial interests, political reciprocity, etc., etc. As already indicated, it would, however, be difficult for the politician to secure the necessary co-operation of these lower classes without disclosing the scheme. Concealed corruption would be exceedingly difficult. Secrecy will out where there are many tongues to bind. It also requires much money to buy many votes. It is true some men may be bought for a "drink," but these are dangerous even to the "machine," for their tongues are loose, and they are weak and faithless. Disclosed corruption would unite the general public as against any other common enemy, and would

[1] See discussion under "Candidates," p. 322.

result in defeat. Where the open primary system is in vogue and a secret vote is allowed, the "machine" is further disconcerted because of the impossibility of telling how the voters who have supposedly been won over really vote. There is no chance to fix responsibility, or to hold the voter to the execution of his false pledge. Every opportunity is presented at the polls for the evasion of the wrongful dictates of politicians, and for the casting of a ballot as conscience wills it.

Since votes alone count under the direct primary, and since every vote counts as cast, every voter stands upon a basis of equality with every other. The "heeler's" ballot counts no more for evil than does his opponent's for good. Under the convention system this is not true. Through the power of money and trickery, brought to bear upon irresponsible delegates, the "machine" has a decided advantage over unorganized but faithful opposition. The delegate whose duty ends with the close of the convention, and who cannot be called to account for his action, is an entirely irresponsible party. He is practically free to follow the selfish ambitions of his own personal prejudices and preferences, and to yield to the alluring temptations which "machine" politicians hold out to him. It is incomparably less difficult to win over one fickle delegate in a convention than it is to bribe the many staunch and true constituents who are represented by this delegate. The voter is absolutely responsible for the way in which he casts his vote, and he knows it. His conscience restrains him. The delegate, on the other hand, knows that he cannot be held responsible for his action. He has passed beyond the power of his constituents. Even a suspicion of broken

faith may be warded off through the possible concealment of his corruption, and hollow dissimulation. He feels more or less free to accept the advances of the "machine" men. Moreover, under the convention plan, "machine" influence is concentrated upon a comparatively small and narrow body of men. It remains closeted and largely hidden from the public in convention lobbies, hotel corridors, and back rooms. Under a system of direct nomination such influence must be directed upon, and scattered among, a numberless body of voters. The politician must come out from his sumptuous headquarters and tempting lobby halls. He must intrude into the very homes of the people and into the very heart of patriotic American life. Can he retain his power, and effectively carry out his schemes under such altered conditions? Truly, unless the voter has lost faith in his own virtue, and knows not the wrong from the right, he will welcome the change gladly, and will demand an opportunity for a direct exercise of his choice in the selection of candidates for office in order to prove his wisdom as a citizen and his honor as a man.

In every respect, the "machine" is seriously handicapped under direct primaries. It may deceive for a time and may temporarily dominate, but it cannot maintain itself long. It cannot control without the voter's permission. It is subservient to the people. It is a servant instead of a master. The very fact that political combinations have everywhere been desperately opposing the advent of direct primaries, is in itself strong evidence of their effectiveness in destroying one-man-power in politics.

CHAPTER V.

THE COUNTRY AND THE CITY VOTER UNDER DIRECT PRIMARIES.

Considerable discussion has been carried on over the position of the country and of the city voter under a direct primary law. The adverse contention is that the institution of direct primaries results in the domination of the country vote by the city vote, and the nomination and election of men representing cities out of all proportion to rural districts, thereby depriving the country vote of its just voice in government. This is, however, largely an assumptive argument. It is based on the supposition that interest in government is proportionately weaker in the country than in the city; that there exists an extreme degree of hostility between the city and the country population which leads to a mutual repudiation of candidates in which the city has the advantage because of better organization, greater voting strength, more convenient voting, and a greater capacity for effecting combinations with neighboring cities. This is strong theory, but weak practice. Experience has thus far given little support to the argument.

The farmer has according to past records certainly proven that his interest in politics is commensurate with or exceeds that of the city voter. The deplorable increase in the city stay-at-home vote has already been dwelt upon. In the country no such general fall-off has taken place, in spite of the fact that "machine" influ-

ences have reached out from the cities, and in many instances have completely stifled the voice of the farmer in the caucus and convention. But the man of the plow did come to the polls in spite of the fact, that the delegates of his choice were repeatedly defeated at the conventions by city politicians; in spite of the fact that he was often thwarted even in the selection of local candidates; in spite of the fact that every year he was called to a caucus many times to vote for delegates to different sorts of conventions, although he may have felt the fruitlessness of his efforts beforehand.

Under our present system the country often fares ill. It is where town politicians control the conventions that the rural vote is dominated by the city "machine." It is much easier to get city delegates "in line" than those from the country. Organization and preconcerted plans count, so that when the delegates from town enter the convention hall, they are frequently able without much difficulty to disconcert and defeat a larger number of more or less unorganized delegates from the country. An investigation was made during the last year in Hennepin county, Minnesota, which revealed the surprising fact that during the last fourteen years the city of Minneapolis has without exception supplied every county officer. During that period the country vote averaged about fifteen per cent., and the chances for office were about one hundred, so that the country districts were campaigned out of some fifteen offices at every election.[1] In 1860 there were fifty-six farmers in the legislature of Wisconsin. Since then the number has been contin-

[1] Address of J. A. Frear before Wisconsin Committee on Privileges and Elections.

ually dwindling, until in 1901 there were but thirty-one. Between fifty-three and sixty per cent. of the population of this State is rural, hence the country ought to be represented by over twice that number. An allowance must, however, be made, because the city population has been continually on the increase, and for the additional reason that some legislators who really represent rural communities are not enrolled so as to indicate this. It seems true, nevertheless, that under our present system the country vote is frequently denied its just representation through political chicane and corruption. While this fact has caused some lagging in interest among country voters, its effect has not been as demoralizing as in the city, and speaks eloquently of the farmer's interest and persistence in politics.

As far as convenience in voting is concerned the city voter has the advantage. He has only a few steps along a sidewalk to reach the polls, while the farmer must in some cases drive several miles over muddy roads, probably in rain and storm, before he can perform his duty of citizenship. But it must be remembered that similar and even worse conditions prevail to-day if he is to participate in the caucuses and conventions—that there is a trip to be made for each of a number of caucuses every year; and that it may be necessary to lose several hours while attending each caucus meeting; while under a direct primary system the farmer may come when it suits him best, for the polls are open all day. He can vote, and return to his home knowing that when his ballot is marked, every vote will count one, and count just where he placed it. If, under the present system of conventions, the farmer is so much alive to politics, how

much more so must he naturally be under a system which offers so many direct and immediate advantages! It has already been shown how large the attendance at the direct primary polls tends to be, and this new enthusiasm is by no means confined to the cities, but stirs the country as well. In the rural districts of Hennepin county, Minnesota, where the vote had been lagging some under the convention system, the increase in the attendance at the polls ranged from fifteen per cent. to thirty per cent. when the direct vote system was given its first trial there, and in some cases practically the entire vote was cast.

The idea of combinations within or among cities to defeat country candidates deserves to be scouted. It presupposes a degree of hostility between these two interests of which present politics, where normally conducted, affords no good evidence. It pictures the city as pitted against the country, thirsting with a desire to dominate and subject. It is only where the politician represents the "city" that such is the case. When the opportunities to nominate are equal, as they would be under direct vote at a primary election, then the votes alone can win; then the city will join with the country vote, in the common cause of good government. Good feeling between the people from town and the people from the country would, it seems, even be strengthened in the new enthusiasm for better administration.

In Minnesota the fear of rural domination by the cities was proven "groundless and largely imaginary," and there was no evidence of antagonism. There was a large turn-out of voters, "and those who took part asserted that for the first time in their lives they felt that

they had actually taken part in the nomination of county officers, and with the same weight per voting strength as did the city. It so happened that the candidate for the legislature on the Republican ticket from the country was defeated for nomination, but strange to say, if the votes of the city alone had been cast against him, he would have been nominated over his opponent from the city. The hostile country vote 'killed' him. This man afterward tried to have the legislature redistrict the county so as to have the country a legislative district in itself, but it failed because the people in the country protested against it, and *wanted the district left as it was before the primary.* Judging from the experience taught by our first trial of the law it benefits the country districts more than the city, and it is the country people who like it best, the result being that a country member has put a bill into the legislature making the law apply to the whole State." [1]

While the Minnesota evidence is not conclusive, but only confirmatory, it speaks well, for it is entirely favorable. The writer has not discovered a single instance where this objection was sustained by practical experience with direct primaries in any State which used a fairly legalized system. There may be such instances, but they have not yet shown themselves. It is the politician, above all others, who has raised the cry in behalf of the farmer. With deceptive mien he poses as his guardian, and points with much feeling to a non-existing danger. While he ought to be given credit for some sincerity, it does appear as though under the mask of

[1] Minneapolis Tribune, Feb. 11, 1901. Also correspondence from prominent Minnesota reformers. The law, as we know, was passed.

solicitude for rural interests, he hopes to arouse prejudice and opposition among the country vote in order to defeat the direct primary bills, and thereby maintain himself in power. Why is not this same solicitude shown at present when the conventions meet? There is no reason to believe that the farmer does not know himself, and since he fails to complain where direct primaries are used, the words of others in his behalf sound hollow and suspicious of insincerity, and cannot be given serious thought and credit.

In this connection the "representative vote system of direct nomination" as successfully employed in Jackson county, Kansas, for about a score of years, may be suggested, as being preeminently fair to the country districts. A description of this plan is found elsewhere.[1] Each precinct is given a certain number of nominating votes as determined by the total vote cast at the last preceding election. It will be seen that if bad weather, or some other adverse circumstance, results in a light vote in country precincts, they would nevertheless have the same voice in nominations as they had in the preceding election. A trial of the Kansas system might yield highly satisfactory results, and its workings are recommended for serious consideration.

The division of the counties into nominating districts, each having one instead of several nominating votes, has also been suggested for the purpose of maintaining a proper equilibrium of country and city interests; but this scheme is, in the estimation of the writer, far inferior to the one in operation in Kansas. In the latter, the final result is cumulative in character. No vote is

[1] See p. 184.

lost in any precinct, but each goes toward making up the final count. In the former plan, a successful minority might in each nominating district completely obliterate the effect of a majority of all voters, composed of the defeated minorities. Proper apportionment would also be more difficult, and tie results more common. "Machine" manipulators might achieve easy success in any district by concentrating their vote, for there would be great power in local strength. The best all-round man might easily be defeated by failing of a nomination in a sufficient number of districts, even though his total vote in all the districts might exceed that of any other candidate.

It is also urged against direct primaries that questions of nationality and geography cannot be given proper consideration in the selection of candidates. If we concede that merit, rather than artifice must win, then this is largely an argument in favor of a direct vote system. If a party deserves to win only on the strength of its principles, its policies, and its candidates, and not by shrewd appeals to national, race, or local prejudices and preferences, which are apt to relegate matters of merit to the rear, then let the direct primary come. If these questions are considered only on the ground of expediency, of political exigency, and not in behalf of the interests and welfare of a county or Commonwealth, then it is better that they be not considered at all.

That there might be a bunching of candidates in populous regions is but natural. In some political divisions the city population is in the ascendency by virtue of numbers, and hence deserves a preponderance in candidates. This is but normal and fair. It must be con-

ceded, however, out of fairness to the argument, that there may be cases where it is desirable to distribute candidates according to localities and race, for pure matters of administration. Under direct primaries this would be largely impossible, but since, in any event, it is the best all-around man, the one most generally desired, who alone can win under direct primaries, these considerations would possess only a minor importance, and could not be looked upon as presenting any serious objection to the inauguration of a direct vote system of nomination.

CHAPTER VI.

THE PUBLIC PRESS UNDER DIRECT PRIMARIES.

It is claimed that the direct primary will establish the press in power. This argument is based upon the fact that since an advertisement of candidates and of policies is necessary to success under the system, the newspaper as the best advertising medium will occupy a position of undue advantage. It is claimed that since it operates upon strictly business principles, and is fully aware of its high function as a channel through which information regarding the different candidates can best reach the public, it takes the selfish and unpatriotic stand of charging for its monopolistic advertising, and of adjusting its praises of men to the size of "what there is in it."

Experience in some cases goes to show that the moment a local campaign is fairly commenced, the columns of the local press close as tightly as a clam-shell, and no information whatever can be obtained from that source by the public as to any of its candidates.[1] This "closed season" is inaugurated in order to coerce candidates into paid advertising if they wish the public to know anything of their claims or fitness for public office. Candidates are thus induced, and in self-defense forced, to prepare and have inserted in local papers, paid advertisements containing florid eulogies and commendations of themselves.

[1] "Dark Side of Direct Primaries," Outlook, July 30, 1898.

In this way it may happen that newspapers will come forward and "recommend" each of a half-dozen men, as being the fittest man for the office. They may "discover" a dozen of men as the "logical candidates" for a single position, all because each has paid for the "space" on the terms of "special" advertising matter. Men's merits may in this way be spooned out to the public on the basis of a well-fixed scale of rates, and he who tips the beam highest with his gold will shine brightest in the columns of the paper. Such advertising would of course be valueless in enlightening the public as to the specific qualifications of the candidates, and at best would but add to the confusion of the voter. But does it seem as though newspapers would generally take such a position? Is the morality of the press so low? Consider the probabilities.

That there will be some such cases is probably true. We have them at present, and very likely will continue to be burdened by them. We can all point to instances where political combinations select candidates, monopolize the press, and advertise their "available political material." This is especially true in the cities where the power of the press is greatest, and since direct primaries must inevitably reduce the "machine," those who oppose the assumption of additional power by the press in essence declare, that "bosses" and professional politicians are more to be trusted with the welfare of the people than our newspaper editors. This is not sound in face of the average standard of our press, and the equity and soundness of modern journalism. It must also be remembered that a newspaper can only permanently influence the public while its influence is good.

When it chooses a by-way, it will soon be discovered. Deceptive journalism cannot long deceive to-day. Should a newspaper once establish the unsavory reputation of indiscriminate or commercial advertising of candidatures, or of unscrupulous and unreasonable attacks upon the party in power, the best way to send a good man to an unearned political grave, would be by getting that paper to favor his nomination.

The argument against the press can therefore not be seriously considered, and while apparently well supported by experience in Cleveland, Ohio, it was found groundless through a wider and more valuable trial in Minnesota. Moreover, the very incompleteness of the Cleveland direct vote system, when compared with that of Minnesota with its excellent statutory setting, itself refutes the strength of adverse experience.

Even a better illustration of the inability of unscrupulous politicians successfully to gain their ends by corruption of the press is afforded in Wisconsin, where, during the last year, an organization patterned strikingly after the New York Tammany, has, by a variety of wrongful methods obtained control of both editorial and news columns of a very large number of daily and weekly newspapers in all parts of the State, to prosecute their fight against the enactment of a primary election law and the institution of a more just system of taxation. Notwithstanding the comprehensive manner in which the work was done, with thorough organization to support it, both money and labor appear to have been wasted. The public seems readily to have discovered both the purpose and influences which led to the change of newspaper policy, promptly resented the attempt to

pervert public sentiment, and made the whole scheme ineffective. Within a brief period after newspapers commenced taking their inspiration from the organization which had subsidized them, they began to be discredited by their readers, even before the opposition had made complete exposure of the means by which such newspapers were controlled.

If our modern journals had nothing else to do but to mingle in partisan disputes and aid in the promulgation of party campaigns, the case would go strongly against them. Theirs is a broader public service. Even though they are in business for "what there is in it," they can realize their aim only by following a rational and honest course. While they may make mistakes, and at times may fail in proper business methods, if the desired goal is to be reached, they must in the long run hold to the road of propriety, honesty, and justness. However great the inducements of the moment may be, their existence is not to be terminated by the day, the week, or the year. Their reputation grows slowly. Their hold over the public mind tightens with years only. No prominent paper under sane management would for a moment entertain the idea of compromising a future and a hard-earned reputation in return for an immediate paltry sum of money.

We may well be calm in the faith that honest, virile manhood will in general continue to abide in the ranks of the press; that if a paper be partisan, it will, as a rule, be fair and open; that every influential, unpartisan sheet will continue to perform the high service of an unprejudiced, disinterested disseminator of information in behalf of a trusting public, as becomes a patriotic organ

of a free-born people; and that deviations from such rules will be resented by the readers of newspapers in the most effective manner.

Upon the basis of the arguments thus far reviewed in the preceding six chapters it is probably safe to say that under a direct vote system, *candidates will tend to be more representative of the people* than under the convention system. There may be more extreme minority nominations; corporations may dictate at the polls; the "machine" may place its man; the city may dominate the country; there may be a geographical concentration of candidates; the press may abuse its powers,—these are the possibilities. Their probabilities have been weighed in the light of past experience, and it seems as though the weight of evidence is distinctly in favor of direct primaries.

CHAPTER VII.

CANDIDATES UNDER DIRECT PRIMARIES.

The question which next presents itself is: Will the public service be more or less open to all citizens who are otherwise qualified, or does the direct primary discriminate in favor of or against certain classes of individuals? Has the rich man an advantage over the poor man; the man of leisure over the busy man; the self-seeking, obtrusive man over him of a retiring, modest disposition? We cannot legislate away the advantages of wealth, any more than we can legislate away the differences of men. The vantage ground of him whom fortune has favored is quite a natural one, and will remain in spite of law and politics. All that can be done is to give the poor man an equal opportunity with his wealthy brother. That the former is not able to make as much of his opportunity as the latter under any system of nomination, is obvious. It ought not to discredit direct primaries to say that the rich man might have better chances of nomination than the poor man. This is the case under caucuses and conventions and will probably in some measure continue to be so forever. On the other hand, it would be a discredit if it could be shown that the poor man is handicapped not only through a lack of the natural power of wealth in seeking to enter the public service under direct primaries, but also by some particular provisions which discriminate against him. Discriminations of this character are

found in primary systems which require the payment of a fee, graduated or fixed; or which make candidates defray the expenses of the primary through assessments which range all the way from five or ten dollars, generally under direct primary laws, to two hundred and fifty dollars, or even five hundred dollars, under imperfect laws or party-regulated systems. Such discriminations are unjust especially in the latter case, while in the former they are justifiable only if the good results outweigh the bad.[1]

But even when laws require petitions instead of cash payments, in order to get the names of candidates voted upon, objection is made on the ground that the rich man is favored. Here we, however, approach that class of advantages which are naturally attendant on him who has means, but which the requirement of a petition seems to reduce to a mininum. No man, if he has friends, can be called too poor to make the most of a petition. No man who has no friends ought to think of making use of one. Yet the moneyed man can, it is true, by not being obliged to economize in his means of travel, get around faster. He can meet more people. He can do more in a given time than can his plainer brother of slim finances. He can advertise in more newspapers. He can publish bigger cuts of himself and of his attainments. He can circulate more catchy declarations of his love for the common people. He can "tip the glass" with larger numbers of the easily won lower classes. He can donate plump sums for educational, charitable, or religious purposes, or rather for political purposes. He can do one hundred and one different things, if he

[1] See Minority Nominations, p. 279, "fees."

chooses, which will all aid him to some extent in securing the nomination over the poorer man, who cannot do these things. But what of it? There is no remedy for this state of affairs. Does it not exist in a most unmistakable manner at the present time under the caucus system? Has not the wealthy man the same advantages which he may have under direct primaries, and many more besides? Does not the mere possession of wealth give a person who cares to enter politics a positive "stand in" with professional politicians, and open the door to office without effort and without appeal to the people? Who are the main springs of the "machines?" Who can best pay the political assessments, the rich or the poor man? Who buys the delegates and secures the nomination? It would be interesting to know, if statistics could show it faithfully, what percentage of the men who are in office to-day are rich.

Under the direct primary the poor man has a distinct advantage in that his freedom from financial connections removes any possible suspicion of his having money in politics, and recommends him to the "plain people." He is more of their kind. There exists a greater community of interest, a mutual bond of sympathy, and if he has capacity his chances with this class ought to be exceedingly good. The rich man must work himself into the confidence of a lower class, and this may be difficult. Money is likely to be looked upon with suspicion by the poorer classes. Its use is distrusted. Positive worth and strength of character are necessary to recommend the moneyed candidate to the conservative plain man. If the rich man has greater merit, the probabilities are that he will win, and the office will be his legitimate "spoils."

If he has not merit, then the poor man's poverty and merit will generally be worth more in the estimation of the people than the rich man's money, and the poor man will win.

In Cleveland, Ohio, many opponents of direct primaries are inclined to support the rich man theory, by claiming that the popular vote plan, as practically administered there, affords an opportunity for the advantageous use of money. This adverse criticism loses much of its force when we recall that the Cleveland system is very limited in scope; is largely extra-legal; operates in the midst of unusually turbulent factional politics; admits of frauduent voting because of the absence of a registration or enrollment system; and contains numerous other imperfections which, if remedied, there is every reason to believe, would reverse the unfavorable experiences which are claimed to have been encountered there.

In Minnesota, after the first trial in Hennepin county, no objection was raised on the score of unfair discrimination against the poor man, except as far as the required ten dollar fee was concerned. In other States the numerous complications and imperfections of the systems in operation more or less cloud any possible conclusions, but nothing was discovered which could be construed as seriously arguing that the man of little means is not better taken care of under a direct vote scheme of nomination than under our present convention system.

How is it with the man of leisure, and the busy man? The circulation of a petition requires much time. The business man cannot afford to spend his hours in such

an undertaking. The remuneration of an office, granting that success would be his, may be infinitesimal when compared with the income of his business. The payment of a fee would be more convenient to him, but it has already been seen that this involves a questionable policy. To the man of leisure a petition would be no great obstacle. Its circulation might be a pastime. When the hours hang heavy it might be a diversion. If he has political ambitions, and feels confident of his popularity, there is nothing to hinder him from filing his petition, and trying for an office.

But how is it at present? Is not much time consumed in running for a nomination? It is necessary to come out before the public; to prosecute a vigorous campaign; to canvass for votes; to advertise both directly and indirectly through friends; probably to "work up a stand in" with the politicians; to attend conventions; and to court the favor of delegates. All this takes much time. Does not Bryce lament the fact that our capable men of affairs are kept out of office, and out of conventions as delegates, because of the time it takes to get there? This is not only an unavoidable circumstance of our political system, but of life itself. It takes time to do things, and it is for us to decide to what particular thing we prefer to dedicate our time. When the decision lies between public service and business, on terms of remuneration, it readily passes to the latter. It is choice that keeps the busy man out of office now. The sacrifice is worth more to him than the god, so he does not sacrifice.

It may be suggested that since under a direct primary it is not necessary to effect compromises with poli-

ticians; to get "pulled" into office by politicians; and to spend much time in a dishonorable and disreputable manner in attempting a nomination, there will be a new incentive to the busy man of integrity to try for an office. If he thinks he possesses the popularity necessary to success an honorable road is clear to him.

It is further argued that a direct primary law will "breed pestiferous demagogues, and retire the modest, unassuming man;" that the lover of notoriety is placed in his proper elements thereby; that the man who has time to scour the country, who loves to fling his name broadcast in the streets, and to see it flaring red throughout the wide universe, is the one who wins out, while the capable, intelligent, busy man with justifiable natural pride, and with praiseworthy modesty and sensitiveness of feeling, is not heard from, and remains withdrawn from the public eye. In other words, this means that the real merits of the candidates are not sufficiently advertised to enable the people to decide intelligently, or that the people have not the ability to do so. The latter argues democracy a failure; the former, the direct vote system. The one remains unproven, the other unconfirmed.

That the public might be deceived by false advertisements of candidates is possible. Where a candidate runs for an office embracing a wide area, only a comparatively few of the voters are personally acquainted with the men seeking office, and can render independent decisions. All others must rely upon reputation, reports, hearsay evidence, newspaper talk, etc., etc., and these may furnish an uncertain basis for an intelligent judgment. On the other hand, it is to be remembered that

political contest is certain to disclose the weakness of a candidate. If he has any faults or frailties of character his opponent is quite sure to discover them to the public. Yet incapable or corrupt men may succeed in stealing a march upon the people once, but their career will end with the next election. The people are too many and too alert to be fooled very often. Nor will there be many chances for deceit. Men who have proven their worth will be retained or chosen to more responsible positions. There will be no "machine" to consult; no "political interest" to be considered; no new men to be placed by politicians on grounds of personal expediency. Hence, good men in office are likely to be re-elected to office if they maintain a clear record and satisfy the public. A direct vote system makes a good record of a man worth something to him. "It places a premium on statesmen." The tendency, therefore, will probably be towards longer terms of service, fewer elections of new and untried men, and rarer opportunities for political mongers and scalawags to betray a trusting public. That the great masses of common people, who would determine results under direct primaries, should scrutinize most closely the merits of the men who ask for office, is but natural, for it is they who are most vitally interested in good government. It is an important trust, which they confide to the public officer, and confidence and faith in his power and ability very naturally precede its bestowal.

The direct primary has shown that the bad officer who hitherto had been kept in the public service only through the influence of politicians, has no chance of

nomination at the hands of the people. Everywhere direct nominations seem to have resulted in the defeat of corrupt office-holders. In Minnesota, where the Republican Association had control of the nominations of Hennepin county previous to the adoption of the direct primary, all its candidates were defeated, and the club has gone out of existence. Among the defeated were four notorious aldermen, all of whom were replaced by strong and honest men. That the men placed in nomination were the choice of the masses of the party, was shown by the fact that out of all the candidates chosen, not a single one belonging to the dominant party was defeated at the election. Heretofore this had not always been the case. The men selected by the city or county convention had frequently been repudiated at the polls. Illustrations of a similar nature are found in the history of the direct vote systems operated in Kentucky, Pennsylvania, Kansas, Missouri, Indiana, Tennessee, and elsewhere.

That direct nominations have given general satisfaction in the selection of better men seems further proven by the fact that not a single instance was discovered in the course of the collection of the material for this treatise, where the system, after having been given a reasonably fair test, was abandoned. The ground seems to have been held where once it was won. Since we do not keep the bad and reject the good, the fact that direct primaries, which are instituted with the distinct purpose of overcoming the evils of "machine" politics, have not only held their own, but are being extended to wider areas, argues in support of the statement which may be

made in conclusion of the preceding discussion, that where candidates are nominated by a direct vote of the people, they tend to be more representative of the people, and more competent to perform the duties of public servants under a democratic government, than when they are chosen through the narrow medium of a perverted convention system.

CHAPTER VIII.

MUNICIPAL GOVERNMENT UNDER DIRECT PRIMARIES.

Strange to say, that, while the avowed purpose of direct primaries is to improve our government, and to purify municipal politics, the cry is raised that the result would be to increase corruption and to still further inject party politics into our cities. This contention can in no wise be reconciled with the fact that at the national conference held at New York in 1898, for the improvement of our primaries, all the great city government leagues of the country, and many of our most able municipal thinkers, were represented, and enthusiastically urged the reform.

The great bane of city government to-day is corrupt *party* politics. The loudest cry of the municipal reformer is: "Get party politics out of our cities." The situation is this: in our cities party organizations are generally controlled by political combinations which secure the nomination of candidates for city offices, irrespective of capacity and honesty, solely for personal and political reasons. When the election comes, those voters who are disgusted with the candidates selected by the politicians or feel their helplessness in mending matters, stay away from the polls entirely, or try to organize an independent movement. With those who attend and vote, the question of party is likely to determine the ballot cast, either because of meaningless party enthusiasm, ignorance, habit, indifference, or bribe, so that the Demo-

cratic voter who goes to the polls casts his ballot for the Democratic candidates selected by the "machine," just because they are Democrats and not Republicans, while the Republican voter adheres to his ticket in the same way. It is the ticket that is being voted in such cases, and not the men. Thus it happens that unscrupulous men, the instruments of the party politicians, are placed in responsible municipal positions, and demoralize our city governments until they reek with corruption.

The municipal reformer hopes to remedy this condition of affairs by "getting party politics out of the cities,"—by inducing the voter to cast his ballot outside of party lines on a pure basis of merit. The principle is, that since the corrupt party organizations within the city no longer furnish the voters with good men; since the individual is left powerless to vote for good men when he acts *within* party lines, he must be shown the necessity of going *outside* of the party, of casting aside his feelings of partisanship and voting for the most capable men. The reform of party organization, the defeat of the party "machine," from within the party is given up as a hopeless undertaking. The partisan is asked to forsake the power which denies him his own and to assert his right independently. In other words, non-partisanship and independence is the doctrine of municipal reform.

Is our municipal party organization beyond reform? If purified, could our city governments be properly conducted by officers chosen through the use of our regular party machinery? Is it advisable to get party politics, even when purified, out of city elections? The answers to these questions may probably be put in the negative.

We will recall modern instances where, in the absence of any appreciable amount of "machine" politics, municipal administration is being conducted upon an eminently satisfactory plan through existing party organization; while in the past, in the early days of city government, when politics was more generally pure, the various party organizations likewise furnished the city with successful officers. Where politics is pure there is no clear reason why a good man should not be even more willing to come forward within party lines than without. Organization of some kind is necessary to success. If he runs outside of party lines as an "independent," or "non-partisan," he cannot win without concerted action; this is an absolutely necessary condition of victory. If he comes under the party standard, he merely makes use of a pre-existing and convenient organization, and thereby does not involve the questions of free trade, tariff, and trusts, which mould the parties on wider lines. Nor does the voter who casts his ballot for such a candidate necessarily let free silver enter into his decisions. Where the masses of the party control the organization the good man can just as easily be nominated within the party lines as without, and there will be no necessity for a reorganization upon an "independent" basis.

It would seem, then, that where the "machine" can be gotten out of party politics, it will not be necessary to get party politics out of the city, because the only service —and it is a most valuable one—which the party supplies in such cases, is that it furnishes a good organization, a purely artificial instrumentality through which the voters of the city may conveniently act in the selec-

tion of their public servants. If the "machine" cannot be gotten out of party politics, then party politics must be gotten out of the cities. And in order to get it out of the cities the voter must be educated in non-partisanship in municipal affairs by being taught to vote for the best man, irrespective of party prejudices and preferences.

But the aim of the direct primary is to get the "machine" out of politics, and the way it has succeeded in Minnesota, California, Kentucky, Indiana, Missouri, and elsewhere, speaks well for further success. It gives every dissatisfied voter a chance to vote directly for the man he thinks ought to be put in office, and thereby discomfits the "machine" and puts it "off duty." Objection is however made that even though the "machine" is ousted, these very direct primaries *inject* national and state politics into the city, when it ought to be gotten out. It is claimed that the voter is forced to vote a straight ticket without any chance of helping into office the good man on another ticket; that he is forced to vote along party lines, even though he might wish to do otherwise. Assume that the voter were to be confined to his own ticket, would he not be very likely to get all of the good men he wanted on that ticket? Experience has, up to the present, generally shown his range of choice under direct primaries to be a very good one.

But more than this, a properly framed law will not deny a voter the right of helping to office any good men running on other tickets, and at the same time will guard against the fraudulent nomination of weak men. A provision such as was incorporated in the Stevens bill of Wisconsin of 1901, as returned from the committee rooms, enables the Republican voter to write upon his

own party ballot, the name of any good man on some other ticket, and to have it count as a nominating vote upon the Republican ticket. In this way a good Democrat may be nominated or "endorsed" upon the Republican ticket.

Moreover, a provision for an independent or non-partisan ticket, such as was contained in this same Stevens bill, enables every voter to vote for any man he chooses, and permits the independent nomination of any good men who may, or may not, be voted for upon some other ticket. Thus perfect freedom of movement is obtained both within and outside of party lines. No voter is compelled to vote for but those men who appear upon his own ballot, but is free to vote for any man he chooses, irrespective of his party. There is, under this plan, no injection of national or state politics into the city nominations.

This criticism applies with some force to our present caucus system. Only one caucus may be attended under the present law in Wisconsin, so that the voter can aid in the nomination of only one ticket. "Machine" influence may prevent even a free expression of his choice. He has no opportunity of "helping in" a good Democrat if he has chosen to attend a Republican caucus, while the "slate" offered by the politicians at the Republican caucus may prove highly dissatisfactory.

A direct primary would serve in better stead. There would be a much larger vote polled. The many voters among the better classes of all parties who form the majority of the stay-at-home vote at the present time, would again take active part, as has been repeatedly shown by experience. There would be no necessity of

getting party politics out of the cities, because party organization would be found useful, and the individual voter would probably discover that he could exercise his power most effectively within party lines. A new enthusiasm and interest in municipal affairs would be awakened among the people, through the restored power of independence and effective action, and would result in the nomination of more satisfactory men. The possibility of reward at the polls for efficient service, would no longer be thwarted by politicians, and would call forth the best efforts of the city's servants. A new freedom would come to the voter in the form of an unhampered choice, based not upon politics, but upon men. With these changes, our city governments would undoubtedly become purer; the wail of municipal corruption would be hushed; and prosperity would be further stimulated.

CHAPTER IX.

WHO SHALL VOTE AT THE PRIMARY?

One of the most important and most difficult problems that primary reformers have had to contend with, and which still remains largely unsolved, is the question of determining who shall vote at the primary elections. It is important, because the successful operation of a primary law is impossible without the proper determination of who shall participate in the functions of the primary election. It is difficult, because it raises puzzling queries which experience must determine. Shall a declaration of party affiliation be required, or shall the voter be given perfect freedom to vote for any or all candidates of any party, protected by the independent security of a secret Australian ballot? If a test is imposed requiring the disclosure of his party membership, shall it be prescribed by the legislature, or by the political party? Shall it be based upon present affiliation, and intention to vote the ticket of the party at the next general election, or shall it require a disclosure of the party for which he cast the majority of his votes at the last election, without a declaration to continue his support of the same party? What provision can be made for the voter who has changed his party affiliations, or who has come of age since the last general election, and hence has not yet legally demonstrated his membership with any party? If a declaration of party affiliation is required, how far may it proceed without violating the secrecy of the ballot guaranteed by the Australian ballot

laws, and without disfranchising certain classes of voters to whom the right of suffrage is extended by law, thus exposing the entire law to the attacks of the courts, and rendering it liable to a decision of unconstitutionality? These are some of the perplexing difficulties which confront the primary reformer. In their solution, he must fall back upon experience, as fast as the tests are made, and upon his own personal estimate of the requirements of the particular political situation in his own State.

Our general elections do not present the same difficulties in the determination of who shall vote. An explanation of this fact strikes straight for the heart of the present problem, and sets forth the fundamental ideas which determine it. A general election, as the term implies, is distinctly an affair of the people, while a primary election is solely an affair of a party of the people. The political business transacted at a general election is the selection of the servants of the State, or of *all* the people; while that performed at the primary, is the selection of party candidates, of party delegates to choose such candidates, and of party committee men. The contest at a general election is between different parties, each striving for the control of the government, while the conflict at a primary election is within the party, each of different elements striving for party leadership, and for party representation in the final struggle at the general election.

As a necessary consequence of this difference in the nature of general and primary elective functions, there exists also a difference in their results. At a general election, there is determined the question of what particular party government we shall have, while at a pri-

mary election there is determined the question of what particular members of the party, as representing its policies, shall be offered to conduct that government. At a general election each party comes forward with its favorite policies and principles, and upon their merits courts the public favor, and asks for the support of its candidates. Each hopes for victory. Each is in honor bound to adhere to the declarations of its platform, and if successful is unremittedly pledged, through the firmly fixed principle of party responsibility and party administration, to carry out its declarations and promises as faithfully as good will and power permit. The defeated minority has a right to be governed, just as the successful majority[1] is pledged to govern, in accordance with those policies and principles by virtue of which success was achieved.

Now this firm duty which falls in its fullest responsibility upon the party, is by the party confided as a sacred trust to those men whom it has seen fit to honor with candidatures looking to office. It follows as a logical sequence, that since it is at the primary election that the party must decide upon whom it is willing to bestow the trust of office, it has a right to ask for free and independent action, unhampered by interference from other parties, so that it may nominate men who will be its loyal representatives, chosen by vote of its own members, and by none else.

In considering the question, therefore, of who shall vote at the primary, two leading ideas must be kept constantly in mind: first, party organization must be kept intact and free from invasion by opposing forces;

[1] In case of plurality elections it is the reverse.

and second, the fullest freedom must be given to all parties in the gathering and the marshalling of their forces for contest, upon as perfect a basis of equality as law can provide. The latter is essential in order that the best results of party government may be attained through a thorough and searching campaign engaged in by all parties of sufficient strength to be dignified with a recognition under the Australian ballot laws, from the time of its inauguration in the form of a nominating campaign, to its conclusion at the general election.

Though opinions may harmonize with reference to these two general principles of party action at the primary, the methods by which it is hoped to establish and maintain them in successful operation by no means agree. An inspection of the primary laws now upon the statute books in the different States of the Union reveals the fact that widely different means have been resorted to for the protection of the party at the primary, ranging all the way from the "closed" or "party primary" system, requiring a sworn declaration of party affiliation, and the balloting of a separate party ticket, to the "open primary" system, where only the general election qualifications are required, and the voter is left free to vote the ticket of any party, in the belief that loyalty to his party will hold him to his duty, while the secret security of his action will insure proper independence in his vote.

It will be of interest to see which one of these two systems is the favorite one as demonstrated by the direct primary laws, or by the party rules which are in force in the States that were studied in this connection. Out of thirty States using the closed primary system, fifteen

leave the prescription of the test for participation in the primary election to the party authorities.[1] In eight States the entire test is prescribed by the legislature;[2] while in six States the legislature prescribes only part of the test, by requiring general election qualifications for voting and permitting the party committee to impose additional requirements.[3] In every case where the power to impose a test is vested with the party, such a test appears to have been required.

A good illustration of the open primary system, as instituted through caucus laws, is found in Wisconsin and in Oregon. In both of these States the voter is free to attend the caucus of any one party, a penalty being imposed for fraudulent participation in the caucuses of several parties. The open primary was also used in Minnesota in 1899, under the famous Hennepin county direct vote system. Under the Minnesota law the voter was permitted to vote the ticket of any one party, or if several tickets were marked, only that one which contained the largest number of marks was counted. Open primary systems, very similar to the one of Minnesota, were incorporated in the California law of 1899, and in the Oregon law of 1901, both of which were declared unconstitutional partly because of their failure to provide for proper party tests.[4]

Since about a dozen primary election bills were defeated, for one reason or another, in the different States

[1] Alabama, Florida, Georgia, Iowa, Kansas, Louisiana, Mississippi, Maryland, Nebraska (Lincoln), Nevada, Pennsylvania, South Carolina, South Dakota, Texas, and West Virginia.

[2] California, Illinois, Indiana, Michigan, Minnesota, Missouri, New York, Oregon.

[3] Arkansas, Kentucky, Nebraska, Utah, Washington.

[4] For a discussion of the constitutional aspects of a test, see p. 370.

during the last year, it will be of interest to see what the present tendency is with reference to this question of a test, and what proportion of the two classes providing for open or for closed primaries were successful. Out of twelve bills studied with this in view, three provided for the open primary system. These were introduced into the legislatures of Wisconsin,[1] Illinois, and Maryland; while the bills introduced into the legislatures of Michigan, New York, North Dakota, Indiana, California, Minnesota, Oregon, and New Hampshire, had incorporated in them the system of closed primaries. All of the open primary bills were defeated, while five providing for closed primaries,—those of Indiana, Michigan, California, Minnesota, and Oregon—were passed. How far the defeat of the former was due to their open primary feature could not be definitely ascertained. But in most cases, it seems to have been so unimportant a factor in determining the fate of the bill as to be practically ignorable.

The decided preponderance of evidence, both past and present, in favor of closed primaries, seems to present a strong argument in their favor. However, in the language of the old country squire of Addison's days, "there is much to be said on both sides." It is argued in favor of the party primary that it alone tends to preserve the integrity of the party, and enables it to choose its own candidates,—men in whom it may have implicit faith and confidence, which, as has already been indicated, is the essence of the ballot at the primary. A test oath,

[1] The Wisconsin bill as introduced provided for closed primaries, but was returned from the committee rooms with the open primary substituted. The reverse was true of the successful Minnesota bill.

such, for example, as the requirement of a declaration of present intention to support the nominees of the party at the next general election, would tend to exclude two general classes of voters from fraudulent participation in the primaries of other parties: first, members of those parties which are recognized by law as qualified to act at primary, or general elections, *as parties;* and second, all independents, or "floating voters," and members of parties lacking sufficient strength to be dignified with a place upon the primary election ballots.

In case of the first class, there are some restraining influences which tend to hold the voters to their own tickets, whether a test is required or not, which in case of the second class, are entirely absent, because its members have no tickets of their own to vote. The motives which actuate the first class in taking part in the primaries of other parties, are by no means commendable, while those of the second class may be defended with some justice, resulting as they do from an exclusion from civic rights, which is an unavoidable injustice inherent in the method and practice of democratic government.

Under the open primary system those members of the first class whose party loyalty is not sufficiently firm, or whose affiliations have been temporarily weakened or broken by a bribe, threat, offer, reward, promise, or intrigue, are enabled to vote for the weak candidates of that party which is their most dangerous rival, and may thereby reduce its chances of electing its men at the general election. To their aid there would come members of the second class—independents, and members of parties not granted the right of tickets of their own. The restraining influences of this class are weaker than

they are in case of the first class. There is less consciousness of forsaken party principles, of broken faith, of fraud and deception. It would be easier to persuade them to join in the conspiracy of nominating the weaker man, if perchance they have not already decided to vote for him for one reason or another. The political schemers may hence look for some support, if not for the major support in their plot, from members of this second class of voters who are excluded under closed primaries.

So much, then, for the *sources* of the fraudulent votes requisite in the nomination of weak candidates in the ranks of opposite parties. What are the absolutely essential conditions to make even an attempt *possible?* There must be no contest in the ranks of the scheming party for that particular office for which at least two unequally popular members of the rival party are running. The difference in popularity between the two or more candidates must be within reasonable bounds, so that the lead of the strongest may be overcome. Such a combination of circumstances is purely the creature of chance, and in any very important offices its occurrence would necessarily be rare.

In order that such an attempt, where *possible,* may be *successful,* it is necessary that some one possessed of reliable knowledge of political conditions determine who is the weaker candidate. This is an undertaking which in many cases is difficult and surrounded by more or less uncertainty, yet it is absolutely necessary in order that the attempt may be at all effective. Next, it is necessary to find enough voters within and outside the ranks of the party to defeat a strong candidate. Here then we must add to the uncertainty of who is the

stronger candidate, and how much stronger he is, the uncertainty of being able to overcome his lead.

Since wherever the open primary system is in vogue, no splitting of tickets is allowed, or only that ticket is counted which contains the largest number of marks,[1] and this in effect is the former, it is necessary to find a sufficient number of voters with consciences that lend themselves to bribery and fraud, who are willing to waive all rights to help nominate their own ticket; who are ready to forsake each and all of their personal friends who may run on that ticket, for the sake of helping in this doubtful attempt of nominating perhaps a single candidate on the rival party's ticket.

In addition to the uncertainties already mentioned, there is another of even greater importance, as to whether or not the voters who have been won over to the plot, and who have once broken faith with their party and their friends, will not do so a second time, and abandon their wrongful leaders when the supreme moment at the polls comes. Since the ballot is free and secret, under the open primary system, the remorseful and penitent voter is perfectly secure in voting as his conscience dictates, and not as his itching palm would have it.

This powerful obstacle in the way of fraudulent machinations is further strengthened by the fact that such a conspiracy must necessarily be kept secret, or the party will render itself subject to counter attacks and draw upon itself the public opprobrium for fraudulent intriguing to secure control of some department of government, not upon the merits of its principles, but through political chicanery and corruption.

[1] Minnesota Law of 1898; Oregon Law of 1901.

In answer to this argument, therefore, that under an open primary system an opportunity is afforded for one party to nominate a weak candidate in the opposing party's ranks, it may be said that such an opportunity can rarely come; the attempt will rarely be made; and success is even more rarely probable. Much more frequently may we expect such results to be accomplished, where,—as under the caucus and convention system,—political manipulators of different parties are enabled to play into each other's hands by setting up weak candidates, and then dividing the ill-gotten spoils between them.

There now remains to be considered, in working towards a conclusion as to the expediency of an open primary system, that portion of the independents, and members of parties not granted the right of tickets of their own, who compose that part of the second class which is not open to corruption, or which has escaped the politician,—men whose political morality is more or less stamped by honesty and sincerity. May they justly, and properly, be excluded from the primaries of other parties under a closed primary system, or shall they be allowed to participate in, and temporarily affiliate themselves with, some stronger party of their choice? The answer depends upon whether we take a narrow and more or less prejudiced, partisan view, or whether our position is determined by liberality and tolerance based upon a broader and deeper idea of justice.

From the partisan standpoint it may be argued, that since the proper essence of the primary is the choice of men who are loyal to the party, and who are trusted by the party to stand by the pledges of declared policies

and principles, only permanent members ought to be allowed to participate, or at least only those who generally affiliate with the party. By admitting votes of another political faith, uncertainties are introduced into the results of the primary, and men may be chosen whom the masses of the party are not prepared to endorse.

On the other hand, it may be urged from a more liberal point of view, that the members of those political parties which are too small to be recognized upon the ballot, as well as the "independents," ought to be allowed to throw in their lot with one party or other at the primary, because, since at the following general election they also can have no ticket of their own, they are free to vote as they choose, and would in all probability vote the same ticket as at the primary. They therefore would occupy the position of a party which is temporarily (for that nomination and election) leagued with and part of some stronger party. Their temporary affiliation, being free in choice, would be honest and sincere. They are for that elective campaign, to all intents and purposes, an integral part of the stronger party, and would therefore seem to have as much a right to participate in the primary as any of the generally affiliated members.

Objection may be made, that the ticket of a different party might be voted at the general election, because of dissatisfaction with the men nominated at the primary. Undoubtedly some members of this second class would swerve around to another party, but this is no valid reason for their exclusion, because it always happens that similar "apostasy" is practiced by regular members of the party. Men of all parties are human, with whom similar causes will produce largely similar effects.

It might further be urged in favor of closed primaries that the imposition of a test would not affect all members of the class under discussion; that there are those among the weaker parties to whom the law does not grant separate tickets, who would exclude themselves under any system; who would remain staunch in their principles, and would prefer to sacrifice their franchise, rather than forsake their party. This is true, but it is merely a plea in mitigation of the argument against closed primaries, without in any way discrediting the open primary. On broad and generous principles, therefore, the open primary is preferable to the closed primary, as far as its effect on this particular class of voters—independents and members of weaker parties—is concerned.

Another burden must be placed at the door of the closed primary in that it is an instrument of power in the hands of the "machine" which can hold the voter to his corrupt pledge of support, because it knows how he votes. Thus the freedom and independence of the ballot, which is so much to be desired, is destroyed in many cases through the introduction of responsibility to a political combination, under which voting may be made extremely disagreeable, and the right to challenge, in the hands of "machine" workers, much abused.

The argument against closed primaries that "no self-respecting man will bind himself to barter away his right to exercise a free choice at the polls for the sake of a vote at the primary," is without weight, for the possibility of framing an effective test which makes it unnecessary to "barter away a right" has already been demonstrated. Of a similar nature is the contention that

the requirement of a test is undemocratic, unrepublican, and un-American, in that it gives this or that group of men (the legislators or the party authorities) the right to say how a larger group of men shall vote. This is a mere babbling, sentimental fabrication, and belongs to that class of indefensible theories which maintain that the enactment of effective primary legislation is an unwarranted and unconstitutional infringement of the freedom of political parties and of the liberties of their members.

With justice it may, however, finally be said that the necessity of revealing the party of one's faith tends to exclude those voters who for some one or another valid reason cannot afford to disclose their party affiliations. This class is unquestionably very small indeed, but against it the closed primary works an injustice which would be removed by an open primary system.

A question may also fairly be raised as to whether or no an oath really accomplishes its purpose and possesses the restraining power which it is presumed to have. It is a highly lamented fact, recognized among the men of the legal profession, that the oath is losing much of the sacredness and power which it once had and which it ought to possess. Through extended application it is acquiring a perfunctory character which loosens the solemn bonds which once gave it a mighty and sacred significance. False enrollments have been of common occurrence. In Kentucky, for example, in 1894 the Democratic nominees were defeated, "although if the declarations of the registered voters had been made good, the Democrats would have had a majority of 11,000." [1]

[1] Report of National Conference on Primary Election Reform, New York, 1898.

Upon the basis of the preceding discussion the writer is prepared to cast his vote in favor of the *open primary system,* as possessing the capacity of giving the most general satisfaction. There may be political conditions under which it would be a complete failure, but such cases would have to be solved by experimentation. What position political parties will take upon the question of a test will depend largely upon their relation to the independent voter and to the members of unrecognized parties.

The merits of the open primary have been set on trial in but few instances, the best test having been made under the Hennepin county law of Minnesota in 1900. It seems to have worked so well that when a new bill was drawn during the last year provision was again made for the incorporation of the open primary. But before its passage the closed primary was substituted for reasons which its friends claimed were largely far-fetched, and displayed considerable ignorance on part of the opponents as to the practical operation of the open primary even in their own States.

If the political conditions or public sentiment in a State is such as to demand closed primaries based upon a test, another important question arises as to whether the legislature or the party ought to prescribe such a test. The answer will depend upon whether we follow out a theoretical or a practical course of reasoning. In accordance with the former we may argue in favor of the party test. The necessity of political parties is unquestioned. They exist as mediums through which the principle of party government is put in operation by making that party which is victorious responsible for government

which is in harmony with its declared policies and principles. For this reason the parties must be their own masters. They must be free to hold primaries in which none but their own members may act. They must choose their own officers. This can only be accomplished by vesting in each party the power of excluding undesirable elements, of determining party membership, of prescribing its own test. It is the test that determines the party. Vest in the legislature the right to impose a test, and you imply the presumption of a right to impose *any* test, however unreasonable or unjust it may be.[1] You give a Democratic legislature the power to destroy opposition to its continued rule by permitting it to legislate away the Republican party through unreasonable tests and *vice versa*. Not only could one party be placed in the hands of its enemy, but the dominant party could maintain itself in power by destroying effective opposition.

Moreover it might also be argued that where the power of prescribing the test rests with the legislature the test could not be changed more frequently than biennially, or in some cases annually, and it might happen that a party would be left powerless to exclude from participation factions created through a division on great public questions, which still retain the old party name, and who might through their nominally legal, but virtually fraudulent participation, expose the party to the danger of a nomination of weak candidates. If, on the other hand, the prescription of a test were vested in the party, its requirements might be changed at any time as the party saw fit, and undesirable factions might be ex-

[1] Spier v. Baker, 120 Cal. 370.

cluded where political conditions demanded it. For these reasons it would seem that the party is the proper authority to prescribe a test. Indeed a member of the supreme court of California put it even more strongly when he said: "No one would contend that the legislature can prescribe what the test shall be." [1]

It is clear that the preceding argument is as preeminently theoretical as it is impracticable. It furnishes a superb illustration of an instance where legal reasoning takes advantage of a practical argument. The suggestion of the California court that a Democratic legislature might impose a free silver test is undoubtedly true as far as the possibility is concerned, but is quite inconceivable in practice. It reduces the political morality of the legislator to the low plane of that of a narrow, selfish, unscrupulous partisan, ready to sacrifice the liberties of his fellow countrymen upon the altar of personal ambition and party fanaticism. All that the argument shows is the extreme possibility which logically might result, but in the eagerness to carry the thread of legal reasoning to the utmost, the element of probability, which is always involved in a practical argument, is entirely lost sight of.

Moreover, we must remember that in every State there exists a written Constitution containing a body of liberties, and behind that Constitution there stands on guard a conservative and watchful judiciary, mindful of the people's interest, whose staying powers would in times of indiscretion and light-headed action, where necessary, check a radical legislature.

Respecting the advantages of the political party in the

[1] Britton v. Board, 61 Pac. Rep. 1115. Dissenting opinion of Temple, J.

prompt institution of necessary changes in the form of a test, we may say that a test can be so worded as to apply effectively to any new parties that might be organized, without in any way jeopardizing the integrity of the old parties, so that frequent changes would be unnecessary. No difficulties of this kind have as yet been encountered where tests have been in use.

Finally, it is also apparent that the argument of the California judge rests upon theoretical, rather than upon practical justice and law, from the fact that it is based upon several assumptions which actual conditions disprove. It assumes, in the first place, that while the legislature might not be guided by reason and justice, the party would be, because it acts directly in its own interests. In the second place, it assumes that party organization, party activity, and party rules would always be determined by what best promotes the interests of the whole party, and not by what is to the advantage of the few; that where the power of prescribing a test is placed in the hands of the party, it rests with an authority which is the faithful representative and mouthpiece of all its members, so that the consensus of opinion of the individual party members as to what constitutes a proper test would rule. Undoubtedly such well ordered and efficient party organizations may be found in some places, but it is generally true that wherever the most pressing need exists for the correction of political evils the party organization is controlled by "combinations," "rings," or "bosses," whose will is master, and which would abuse any power that might fall into their hands. In such cases the delegation of the vital function of declaring the test of party membership, apparently to the

party, but really to the "powers that be," would clinch upon the helpless masses a continuation of the curse of bossism. The result would be as disastrous to the people as was the application of the principle of rule regulation by the parties themselves to the primaries, in consequence of the success of the Australian ballot system, and under which the primaries in our cities fell into their present state of disrepute.[1]

The fact that in so many of the States enumerated on a preceding page the parties prescribe the test, is no argument in favor of such an arrangement, because a study of the primary election laws now in operation in those States will show that where the laws are more or less comprehensive and complete, the test is invariably prescribed by the legislature; while where they are rudimentary, or merely legalize direct primaries, the prescription of a test is, together with all other rules, left to the party as a matter of fact, because the idea of state regulation of parties in their activities at the primaries has not yet taken sufficient root to suggest such a step as a statutory test.

We must conclude, then, that the prescription of a test for the determination of who shall vote at the concurrent primary elections of the different political parties, may best be confided to that body which has already been entrusted with the incomparably higher function of making *all* the laws of the people—the legislature.

This would be no infringement upon the just liberties of political parties, because "they are no longer private concerns organized for agitation, but they are public institutions organized to name the officers of govern-

[1] See page 39 on party-regulated primaries.

ment and so to control the government itself. The individual citizen has practically no voice in government except through these party organizations. Consequently, the State which protects his rights of citizenship must protect his rights of partisanship. If this protection is left to a private syndicate, the test will be his past devotion to the syndicate. If it is put in the hands of the State, the test will be his present intention to support the party of his choice. This declaration of intention rather than previous affiliation, is the test of citizenship, whenever needed, as in naturalization, and should also be the test of partisanship whenever needed. *The only safeguard of such a test is the sovereign power of law.*" [1]

What shall the form of such a test be? Shall it lay stress upon past affiliation with a party, or upon a present intention to support its nominees? Shall it be worded in general terms, or shall absolute and unqualified allegiance to the party be required? As Professor Commons well says, when the prescription of a test is left with the party, emphasis will be placed upon past devotion to that party. If it is left to the State, the principle applied in the case of naturalization is adhered to, and a declaration of intention to support in the future, i. e. at the next general election, is demanded. The former is too narrow and too partisan. The latter is the more logical, and more generally advocated, and makes room for the voter who has come of age; for the naturalized voter; and for him who has changed his party affiliations.

It may be well in this connection to study briefly the

[1] Prof. John R. Commons, Syracuse University, in address before National Primary Election Conference, New York, Jan. 20, 21, 1898.

tests embodied in the important primary election laws passed during the last year. The Indiana law of 1901 entitles only those persons to vote who at the last election voted for the regularly nominated candidates of the party. In case of a challenge the voter must make affidavit to the effect that he is a qualified legal voter of the precinct; that at the last preceding election he affiliated with the party holding the primary election; that he voted for the regular nominees of the party; and that he intends to support and vote for the regular nominees at the coming election; provided, however, that any qualified voter who has come of age may vote, if he declares his intention of supporting the party's candidates at the next election. This test, it seems, might be declared unconstitutional upon the ground that it excludes the following qualified persons from voting at the primary: (1) Those who have changed their party affiliations; (2) those who were naturalized since the last election; (3) those who were qualified to vote, but for one reason or another, failed to do so.

Under the Michigan direct primary law of 1901 a very simple test is required. The voter merely states with what party he is affiliated, and then receives the proper ballot.

The Oregon law of 1901, applying to the election of delegates to conventions in cities of 10,000 inhabitants and over, requires the voter either to declare that it is his intention to support a majority of the party's candidates at the next election; or that he voted for a majority of its candidates at the last election.

The test found in the California law of 1901 regulating the selection of delegates at the primaries, requires

a *bona fide* present intention to support the candidates of the party. The Oregon test is superior to that of California, because of its general wording. It is inferior, in that it permits a Democrat who has turned Republican since the last election, to vote the Democratic ticket nevertheless, just because he had supported the Democratic candidates at the preceding election.

Under the Minnesota law of 1901, the voter "receives a ballot of the political party with which he declares (under oath, if his right thereto is challenged) that he affiliated, and whose candidates he generally supported at the last general election, and with which party he proposes to affiliate at the next election; provided, that a first voter shall not be required to declare his past political affiliations." This test excludes the following classes of qualified electors from participating in the primary election: All voters who changed their party affiliations since the last election; and all those who for one reason or another failed to vote at the last election, although qualified to do so. These two classes of voters are disfranchised because they are neither first voters, nor generally supported the party at the last election. Two other classes of voters—those who were naturalized since the last election, and those who came of age, who are, in some States, disfranchised under falsely worded tests, are, however, provided for under the Minnesota law.

Probably the best form of a test is the one incorporated in the excellent enrollment system of New York, which requires a declaration of *general* sympathy with the principles of the party, and the intention to support *generally* the nominees of the party. This test

meets the objection which may be made against one which requires a declaration of intention to support *all* of the party candidates at the next election, to the effect, that it tends to exclude those who are ready to support the ticket generally, but not every single candidate, and that it may prevent proper independent action at the elections, by those who took the oath.

It may be said, then, in conclusion of this chapter, that the open primary system of voting, under which no declaration of party affiliation is required, appears worthy of general preference to the closed or party primary system; that where, for one reason or another, closed primaries are desired, the test may well be prescribed by the legislature, and in form require a declaration of intention generally to affiliate with the party at the next election.[1]

[1] For other arguments in favor of such a test and for its constitutional aspects, see p. 370.

CHAPTER X.

THE CONSTITUTIONALITY OF PRIMARY ELECTION LAWS.

While the question of the constitutionality of primary election laws has been raised in a large number of States, and some laws have been declared unconstitutional because of their incorporation of provisions obnoxious to State Constitutions, no court has ever denied the right to the State to control by appropriate legislation the nomination of candidates for office. Foremost among the States in which important constitutional questions were raised, stand Colorado, Pennsylvania, New York, California, and Oregon. In the case of Colorado and Pennsylvania the decisions turned upon the broad principle of whether or no a legislature might recognize political parties, as such, in law, and then proceed to regulate their activity in making nominations; while the California decisions, of which there were three, and the decisions of the circuit court and the supreme court of Oregon, conceded this legislative power, and carried the legal idea a step further, by declaring primary elections subject to the Constitution. This was accomplished through the interpretation of primary election laws as being election laws in the same sense as general election laws, and hence subject to all constitutional provisions respecting "elections authorized by law."

In 1881 the charge of unconstitutionality was ad-

vanced against a Pennsylvania law[1] prohibiting bribery and fraud at nominating conventions and primary elections, upon the ground that such legislation encroached upon the liberties of political parties and restricted their freedom of nomination. The court, however, overruled this plea, and declared conventions and primaries fit subjects for legislation.[2]

A similar question was raised in Colorado in 1886, when a bill for the prevention of frauds in the nomination of officers was introduced in the legislature.[3] The Senate, by resolution, requested the supreme court to answer the following questions: "Is it constitutional to enact any law attempting to regulate the machinery of a political party in making nominations of candidates for public office? Can the law take any cognizance of political parties as such? Can the law interfere anywise with the modes and methods employed by a political party in the nomination of its candidates for public office? Are the provisions of the bill properly the subject matter of legislation?" In reply the supreme court held: "We do not find any constitutional objection to the bill submitted for our consideration, nor is our attention called to any provision of the Constitution as forbidding such legislation."

The decision of the supreme court of New York in sustaining the primary election law of 1899 is also of considerable importance, because of the comprehensive scope of the law and the detailed manner in which it regulates all political action at the primary, in its en-

[1] Session Laws of Pennsylvania, 1881, p. 70.
[2] Leonard v. Commonwealth, 112 Pa. St. 622, 4 Atl. Rep. 220.
[3] In re House Bill No. 203, 9 Colo. 631.

deavor "to assure to all citizens equal rights in the primary elections, conventions, and political committees of the party with which they were allied." [1]

In the California and Oregon decisions the points at issue were much more involved. In the early cases, it was simply a question of constitutional power to legislate; now the decisions turn upon the constitutionality of the legislation itself, the power to enact being conceded. The main grounds upon which the primary election laws were declared unconstitutional in the California cases are the following: That they were local or special legislation; that they enfranchised persons who would be illegal voters at "elections authorized by law;" that they disfranchised legal voters under the Constitution; that they infringed the rights of political parties; and that they discriminated against the weaker parties.

The rule of local or special legislation was applied by the supreme court of California to the act of March 27, 1895. It was held that the law being expressly confined in its operation and effect to counties of the first and second class, and not being a regulation of the compensation of county officers, for which purpose alone the Constitution provided for the classification of counties, was local, special, and unconstitutional. There was no necessity for local legislation, it was claimed, "because the law dealt with a subject matter to which a general law, having a uniform operation throughout the State, could be made applicable." In confirmation of this point, it was clearly shown from an inspection of

[1] People ex rel. Coffey v. Dem. Gen'l Com. of Kings County, 52 Hun (N. Y.), 170, 58 N. E. Rep. 124.

its terms that the law was originally designed to apply uniformly throughout the State.

It was further shown that the act was, both generally and specifically, made an essential part of the general election law of the State. Section 21, for example, provided that no candidate could have his name printed upon any ballot as a candidate for public office at any general election in the State, unless he had been nominated by a convention of delegates chosen in accordance with the act. For this reason it was not only inconsistent with the Constitution upon general grounds, but violated the specific provision prohibiting local or special laws for conducting elections. It was also held that the court could not, by striking out the section expressly limiting the operation of the law to two counties of the State, make it applicable throughout the State, as to do so would be equivalent to legislation, by imposing upon the whole State, a law which it was clear that the legislature had intended to apply only in two counties, and which would not otherwise have passed. These holdings of the court plainly exposed the inadequacy of the Constitution to meet the case, and emphasized the necessity for an amendment. It was admitted that even though the act were good and beneficent, the State could not enjoy its advantages because it bore the stamp of special legislation, which was absolutely prohibited by the Constitution upon the assumption that special legislation is generally bad.

The primary law of 1895 having been declared unconstitutional, the legislature passed another act in 1897, which met with a similar fate in the case of Spier v.

Baker.[1] The objections raised in this case did not go to the merits of the direct vote system, but related wholly to matters of detail in working out the scheme of the election. One technical point raised was that the title did not express the full import of the bill. It was held by the supreme court that the insertion in the title of the words, "for other purposes," did not have the effect "to validate provisions of the act which were not germane to the particular subject expressed in the title." Such illegal provisions were found in section 12, which declared that no person was to be allowed to hold more than one proxy at any convention; section 24, which contained certain powers of state conventions; and others.[2] It was necessary for the primary election law to conform to the Constitution of the State, because the court considered such an election as "authorized by law," for the reasons that it was mandatory; that it was made a public expense; and finally, that it had already been declared such in a supreme court decision.[3]

The law of 1897 did not conform to the Constitution, and hence was void. Section 1, Article II, of the Constitution provides: "Every native male citizen of the United States, every male citizen who shall have acquired the rights of citizenship under, or by virtue of, the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election pre-

[1] 120 Cal. 370, 52 Pac. Rep. 659.
[2] Sections 13, 17, 33-36.
[3] Marsh v. Hanley, 111 Cal. 368.

cinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law." The provisions of the primary election law were inconsistent with these provisions of the Constitution. Section 23 of the act enlarged the right of suffrage by requiring only a legal residence in the county for thirty days prior to the election, as a condition of suffrage, "whereas the Constitution requires a legal residence in the State for one year, and in the precinct thirty days." It was also in contravention of the Constitution in this: "that the naturalized citizen under the Constitution is not entitled to vote unless his naturalization occurred at least ninety days prior to the day of election," while under section 23 of the act, citizens made such by naturalization as late as the last day preceding the election would be entitled to vote.

Section 22 of the act curtailed the right of suffrage, by declaring "that only those electors whose names appear on the great, or precinct registers, or the supplements thereto, *used at the last general election,* are entitled to vote." This provision excluded the following classes of electors, qualified under the Constitution to participate in elections, from participating in the primaries held under the act: (1) All native born citizens who had arrived at age since the last general election; (2) all foreign born citizens naturalized since the last general election, and ninety days prior to the primary election; (3) all electors who had changed their residence from one county to another since the last general election;[1] (4) all electors who had secured a residence

[1] The law makes provision for the transfer of a registration, but there are no means provided by which the transferred voter may have his name placed upon the register used at the primary election.

in the State since the last general election; (5) all electors of the State at the last general election who failed to have their names placed upon the great, or precinct registers, or the supplements thereto, prior to that election; (6) all foreign born citizens who were naturalized within ninety days next preceding the last general election.

The California law of 1897 was declared unconstitutional, not because of the incorporation of an illegal test, as is sometimes erroneously believed, but because of the presence of these specific provisions of suffrage which were inconsistent with like constitutional provisions. The court does not pass decisive judgment upon the test. It contents itself with "alluding to" the power of prescribing a test, and with "suggesting" possible dangers that might result should the legislature impose the test. It goes on to say, that even though it be conceded that the test provided for by section 17 of the act—a *bona fide* present intention of supporting the nominees selected by the delegates, is a valid exercise of legislative power, and that the primary elections provided for by the act are not elections authorized by law within the meaning of the Constitution, the act is nevertheless unconstitutional and void for being special legislation, in that it discriminates in favor of and against certain classes and individuals, who under the Constitution are entitled to vote at elections. In other words, aside from the objections already mentioned, the law was also held unconstitutional because it did not permit certain classes of voters who were ready and willing *to comply with the requirements of the test,* to participate in the elections.

That the court was not inclined to pass judgment upon the power of the legislature to prescribe a test, is clearly shown by its language in discussing the question. In introducing this point, the words were as follows: "*If* such a power may be sustained under the Constitution, then the life and death of political parties, are held in the hollow of the hand by a state legislature." [1] The court elaborates the possible dangers which might lurk in such a power, and closes with the statement, that "the foregoing *suggestions* are put forth in order that the state legislature in the future when dealing with this question may appreciate the importance of its work when viewed in the light of the constitutional difficulty to be met and overcome." None of the court's statements can therefore be taken as declaring the test unconstitutional outright, although it might probably be inferred from the general sense of the decision that while the court for the time being contents itself with "merely suggesting" the difficulties which surround a test, it might render a more decisive and adverse judgment should another opportunity present itself.

As a result of the supreme court decision of 1898, declaring the law of 1897 unconstitutional, a new law was enacted in 1899, abolishing the test of a *bona fide* present intention of supporting the party's nominees at the next election, and substituting the "open primary" method under which a secret and free vote of any party's primary election ticket was permitted; and also eliminating the other obnoxious features of the act of 1897 which had been declared in contravention of specific provisions of the Constitution.

[1] See p. 343.

Fault was, nevertheless, also found with the act of 1899, and on July 28, 1900, the supreme court of California, for the third time, dealt a death blow to a primary election law by declaring it in violation of the Constitution.[1] The law discriminated against weak political parties, "by providing an exclusive scheme, controlling political parties, in holding their conventions for the nomination of candidates to public office, but denying the benefits of the act to all political parties which did not cast at least three per cent. of the total vote at the last preceding election." Such parties were not allowed to assemble in convention to choose nominees to be voted for at the primary election, and were therefore not only discriminated against, but disfranchised, by being compelled, if they voted at all, to vote for representatives of other political parties. "The deprivation of the right of selection, is a deprivation of the right of franchise." For these reasons it was held that the law conflicted with the Constitution, Art. I, secs. 10, 11, and 21, giving the people the right freely to assemble together to consult for the common good, and providing that no citizen, or class of citizens, should be granted privileges or immunities, which, upon the same terms, were not granted to all other citizens; and that uniform operation was a requisite of all laws of a general nature.

The act was also declared unconstitutional upon the ground that it destroyed the integrity of political parties. "Self-preservation is an inherent right of political parties, as well as of individuals."[2] The law, by requiring the primary elections of all political parties to be

[1] Britton v. Board, 61 Pac. Rep. 1115 (Cal.).
[2] Whipple v. Broad, 25 Colo. 407, 55 Pac. Rep. 172.

held at the same time, and under the control of the county board of election commissioners, and providing for the use of but one ticket, which was received by the intending voter without question as to his political affiliations, and taken into the privacy of a booth where he might name such delegates as he desired to the political convention, of one or another of the political parties,[1] whether he was a member of that party or not, was held to be an unwarrantable invasion of the rights of political parties, and an innovation of the rights reserved to the people by the Constitution, Art. I, sec. 22, providing that the rights enumerated in the Constitution shall not be construed to impair or deny others retained by the people.[2]

In the dissenting opinion it was pointed out that the provision which limits the enjoyment of the law to those political parties which had cast at least three per cent. of the total vote at the last election, did not necessarily make the act unconstitutional.[3] Under the Australian

[1] No splitting of tickets was allowed. "Any ballot, upon which any names appear for delegates to more than one convention for the same territory, shall be disregarded." See also p. 365.

[2] Two judges concurred in the entire opinion. Two concurred only in part, and the remaining two, including the chief justice, dissented from the opinion in its entirety.

[3] The principle upon which laws requiring a party to have cast a certain percentage of the vote at a previous election, before it acquires the right to participate as a party in public nominations, are sustained, is well set forth in the following decision: "Of all the acts which have been passed to bring about this system of voting, I am sure none can be found which does not in some way circumscribe the privilege of demanding a place upon the official ballot as a party or as a candidate of a party. If it was left in the power of each voter, or each coterie of three voters, to adopt a party, the polls would probably be littered with ballots 'thick as autumn leaves that strew the brooks in Vallambrosa.' Great expense, labor and inconvenience would result without any appreciable benefit to the voter or to society. These regulations may not be the wisest that could have been adopted; still they are regulations which do not seriously impair the right of any citizen to vote. They are intended to restrict the number

ballot laws political parties are classified in a similar manner for the purpose of determining which shall be included or excluded by the law. Such provisions have been declared constitutional by the courts in several States.[1] Where similar provisions are found in primary election laws, they undoubtedly refer to similar great classes of constitutional or extra-constitutional political parties. Since the primary election laws in which such provisions are incorporated are a part of those election laws of the State which are controlled by provisions in the Constitution relating to "elections authorized by law," they must also be constitutional, because similar provisions in the Australian ballot laws which are a part of the same system of election laws, and governed by the same constitutional provisions, have repeatedly been declared constitutional.

Moreover, in the case of California, for example, where the ballot law does not recognize a political organization as a party which has failed to poll three per cent. of the total vote cast at the last election, no substantial benefit could be derived by such a party from participation in a primary, as a party, because the nominees of conventions composed of delegates selected at the primary election of such a party, would not be entitled to a place upon the ballot[2] at the general election. There could, hence, not be a violation of a right to participate as a party in a nomination or election, because no

of party tickets within reasonable limits, while at the same time permitting any body of citizens whose number is sufficient to give importance to a concerted political movement to organize as a party." State v. Black, 54 N. J. L. 446, 24 Atl. Rep. 489.

[1] Britton v. Board, 61 Pac. Rep. 1115 (Cal.).

[2] Britton v. Board, 61 Pac. Rep. 1119 (Cal.). Dissenting opinion of Justice Garoutte.

such right existed. For this reason no constitutional objection could be raised to the exclusion of parties at primaries which would in any event be excluded from acting, as parties, at a general election held under the protection of the Constitution.[1]

A provision very similar to that which created the difficulty in the California law of 1899, has recently incurred the stamp of unconstitutionality in Oregon.[2] The Oregon law, which was passed during the last session of the legislature, provides that primary elections for the nomination of all candidates shall be held on the same day, that voters shall be given a ticket upon application containing the names of candidates of all parties. On the ticket the candidates are arranged on the basis of offices under their proper party organizations. The voter takes the ticket into the privacy of a booth, and there in perfect secrecy may vote for the candidates, committeemen, and party principles and rules of any party. He must, however, confine himself to one ticket, or if he marks the tickets of several parties, only that one counts which contains a majority of marks.

This provision gives to members of one party an opportunity to help nominate weak candidates on a rival party's ticket; to aid in the selection of its committeemen; and to determine its principles, and its rules of organization. In cases where the vote is close, it is barely conceivable that such an opportunity might empower one party to dictate in some of these matters for a rival

[1] This argument would hold in every State where the percentage party vote of total vote provision of the primary law is identical with, or less than, a similar provision in the Australian ballot law as applied in that particular State.

[2] Decision of circuit court, Multnomah county, Sept. 21, 1901, in the case of the Morgan direct primary law.

party, thereby destroying the essence of party organization and of party government. The likelihood of such a conspiracy on the part of one party to defeat the proper functions of another party, is commented upon by the court to the effect, that "possibly this might not follow in practice," but it adds, "Is not any law constitutionally defective that allows or permits such to be done under forms of law?[1] The law gives these outsiders legal opportunity, and power, so to do, and furnishes no relief if they do, and so far as the likelihood of it being done, all know that almost anything may be expected whenever any political advantage is to be secured thereby."

A thorough understanding of the political situation in Oregon is necessary to a proper insight into the circuit court decision which declared the Morgan direct primary law unconstitutional. Besides the Morgan law, the Lockwood act regulating the selection of delegates to conventions, which had also been passed by the last legislature, was up for consideration.[2] The Lockwood act was held to be constitutional, and the case was then appealed to the supreme court where the decision of the lower court was affirmed. The Lockwood act seems to have been sustained by the circuit court not only because it was strongly supported by previous supreme court decisions, but also, it is claimed, because it was favored by active, organized politicians to the prejudice of the Morgan law. The Morgan law, however, with a provi-

[1] An eminent jurist answers "no" to this query. The courts "may never declare a statute void, unless the nullity and invalidity of the act are placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the act sustained." Cooley's Const. Lim., p. 216.

[2] See p. 227.

sion for an open primary system of voting, such as made the California law of 1899 unconstitutional, lacked the weight of favorable court decisions, and through a series of complicated political moves was left without organized political support, although a large number of legislators had been elected by virtue of their direct primary pledges. It is but natural that courts should be influenced by political situations.[1] The strong attack of a measure by powerful advocates who are sustained by great political forces, as was the case in Oregon, must, even unconsciously, influence the best judges.

The Oregon court was probably also influenced by the California decision of 1900. It follows a very similar course of reasoning, although, strange to say, it utterly fails to take into consideration an important difference between the unconstitutional features of the Oregon and of the California laws. The California law provides: "That any ballot upon which any names appear for delegates to more than one convention *for the same territory,*

[1] The Republican party of Multnomah county, with a voting strength about twice that of the Democratic party, is controlled by the Simon and Mitchel factions. One writer describes the situation with reference to the Morgan law as follows: "A Democratic politician looks at the direct primary law in this county thus: If it is a success, it will unite the Republican party in the county and leave no hope whatever for any Democratic office-seeker. As a result of the break up of the last campaign, our district attorney is a Democrat. He was nominally in control of the suit, and took his stand against the Morgan law. Every political force was against the law. The now apparently strongest faction of the Republican party was supporting a law (Lockwood act) whose mere enactment was a reflection upon the Morgan law. The Democrats were supporting the same law, and the first advocate of direct primaries (Mr. Bingham) was fighting the Morgan law with all his might, and fighting for a fee in line with the inveterate enemy of all his own ideas. At one time during the last spring our only paper came out with a strong editorial in favor of the Morgan law. But the editor seems to have been called down since no similar utterance was ever heard. The Simon faction has also openly opposed the reform, save where it was deemed good policy to get under cover, as they did in the campaign pledges."

shall be disregarded." That is to say, no ballot shall contain names of candidates for delegates to more than one state convention, or more than one district convention, or more than one local convention, or more than one city convention. This does not permit the Republican voter to vote for delegates to a Republican and to a Democratic state convention, or district convention, or local convention, but it does allow him to vote for delegates to a Republican state convention, to a Democratic district convention, and to a Populistic local convention, and to have his votes count on the tickets of *each* of those parties.

The Oregon law however, only permitted the voter to choose what ticket he desired to vote and to have his vote count upon that ticket, and in case he voted on several tickets, only the one containing the largest number of marks was canvassed. He was, therefore, confined *to one ticket,* while under the California law, he could vote effectively upon the tickets of *several* parties. This significant difference between the two laws seems to be entirely overlooked in the Oregon decision, and while it might not have been of vital influence in determining the Oregon case, it certainly greatly strengthened the position of the California court.

Both the California and the Oregon courts laid particular stress upon the existence of an *"opportunity"* for members of one party to dictate the action of another party at the primary, without the presence of a remedy in case they did so. If the courts continue to base their decisions upon the "opportunity," the "possibility," instead of upon the practical "probability" involved, then every form of open primary system would

be unconstitutional, and resort to a test of one kind or other would be the only way out of the difficulty.

Upon grounds similar to those advanced by the Pacific courts, the Stevens bill of Wisconsin, if enacted, might have been declared unconstitutional.[1] The voter was given a similar "opportunity" fraudulently to participate in the nomination of a rival party's candidates. The Stevens bill, however, contained an ameliorating difference from the laws of California and Oregon, in that the voter forfeited his entire ballot, if he attempted to vote on more than one ticket. This provision would have operated as a deterring influence in preventing even the attempt to split tickets. Moreover the Stevens bill also removed the strong inducement to forsake the party of one's choice, by permitting the voter to cast his ballot for any good men on other tickets, by *writing* their names on his own ballot, and having such votes count toward the nomination of the preferred candidates for the respective offices in his own party.

But while these strong provisions of the Stevens bill might have reduced even the probability of voting with a rival party to a minimum, the possibility of voting with that party would still have remained. Just why a court should base its decision upon this fact, does not seem quite clear and consistent. Among our public institutions in general, and among our political institutions in particular, there are those which present the opportunity for doing a great wrong; yet the institutions remain with us because the opportunity is never, or seldom, seized, and because the good which they do out-

[1] This was not true of the original bill which required a declaration of party affiliation.

weighs the bad. Under the Wisconsin caucus law, for example, the opportunity is presented to the Democrat to attend the Republican primary and to help nominate any Republican candidate. There is nothing to prevent a large number of Democrats from voting in, and controlling a Republican caucus, even though the Republicans know of their presence, and protest against their participation. The only thing that tends to prevent such fraudulent action is the fact, that since under the present Wisconsin law but one caucus may be attended, every Democrat forfeits his entire right to aid in the nomination of candidates at the Democratic caucus. But as far as the "possibility" of voting with an opposing party, is concerned, it exists just as clearly as it possibly could under any open primary system which might be devised.

The circuit court of Oregon does not share in the opinion of the author in reviewing the situation in its own State, where a provision similar to that incorporated in the Wisconsin caucus law is in operation. It holds, that "under the existing primary law an elector *openly* visits some one of the party primary elections, as has always been the case from time immemorial." By that open action he affiliates himself with that party, and by so doing "he is but exercising his privilege, and is sure of a cordial welcome in any party, especially where there is a shortage of votes. The situation is vastly different from that where law makes it obligatory on one party to submit its nominations or party politics to a secret ballot of all voters of all parties, or of no party at all, without any manifestation of party affiliation on the part of the voter, or test of party affiliation whatsoever."

The fact that the practice dates "from time immemorial" does not necessarily prove its constitutionality, while acquiescence in the results of the primary, no matter who determined its action, is as "obligatory" under the caucus law, as it would be under the direct primary law. Apparently the only difference in the situation, and it does not appear to be so very "vast," is, that while under the direct primary law, the voter has the opportunity to vote fraudulently with a rival party, *in the privacy of a booth,* under the present caucus law he must *do so openly.* This would undoubtedly keep those voters, whom false self-respect and hypocrisy forbid to do in public what they would do unscrupulously in secret, from transgressing the spirit of the law, but beyond that, and manifestly upon no suggestion of principle, there is, it seems, no difference in the two cases. The "possibility," or "opportunity," for wrong exists as plainly under the one as under the other. That the court bases its decision upon the vague and shadowy "possibility" of wrong rather than upon even a remote probability, is plainly indicated when it says, "possibly this (the voting of a rival party's ticket) might not follow in practice, but is not any law constitutionally defective that allows or permits such to be done under forms of law?"[1] Since the difference between the two cases, as already

[1] Established rules of constitutional law seem to answer this question with an emphatic "no." "When the constitutionality of a statute is questioned, the court will not presume that the legislature acted outside of its legitimate sphere. This is a fact which must be established by the one who attacks the constitutionality of the statute. Counsel relies largely upon the possibilities of abuse in the operation of the law if it should be upheld, and assume that its abuse would follow. By this mode of reasoning most of our statutes might be held unconstitutional." Argument of Hon. E. Ray Stevens before supreme court in State of Wisconsin v. Garrett Lammers.

suggested, seems to be slight, and of such a nature as not to affect the "possibility" element involved, it follows that if a direct primary law containing the open primary system is unconstitutional, then all existing indirect primary or caucus laws containing such provision, as, for example, the Oregon and the Wisconsin laws, must be unconstitutional when judged by the same principle.

There is good reason for believing that an open primary would in most cases be successful,[1] and it seems that when the courts base their decisions too absolutely upon the "possibilities," of wrongful action involved, rather than upon the "probabilities," they permit outgrown legal principles to override practical justice, and cast upon judicial action the imputation of political influence. Should the courts by adhering strictly to legal reasoning, regardless of the practical aspects of the situation, continue to declare primary election laws which contain the open primary system unconstitutional, it would be necessary to devise some compromise system wherever no absolute test of party affiliation is desired.

The following method is proposed as a probable solution of the difficulty. Make the test in form like the one incorporated in the New York enrollment system by requiring a declaration of *general* sympathy with the principles of the party, and of an intention to *generally* support its candidates at the next election. Add to this the provision of the Stevens bill of Wisconsin and, in modified form, of the Morgan law of Oregon, permitting the voter to cast his ballot for any good man upon some

[1] For a discussion of the open primary system, see p. 334.

other ticket by writing the name of the preferred candidate in a reserved space on his own ticket, and have it count as a nominating vote for the given office *on that ticket.*

Such a test removes the legal "possibility" whereby one party is enabled to dictate the action of another party. It preserves to the greatest possible extent the secrecy of the ballot, without presenting the opportunity of defeating proper party activity. It removes the objection of unconstitutionality, advanced against a declaration to support *all* of the party's nominees unqualifiedly, in that it does not reveal for what particular candidates of the party votes will be cast at the general election. It overcomes the objection of the possibility of "machine" control which is advanced where a voter is compelled to declare his party affiliation, and to *vote a straight party ticket,* because it is impossible to tell whether he votes for some or all of the candidates named on his ticket, or whether he writes the names of candidates which appear upon other tickets in their places. It avoids publicity at the primary, and does not violate the secrecy of the ballot at the general election. It compels the voter to identify himself with some party, without revealing the exact extent to which he does so. It protects party organizations, without permitting politicians to exercise undue influence. It therefore combines the main advantages of closed and of open primaries, and avoids all conflict with State Constitutions or established principles of law.

The recent decision of the supreme court of Oregon declaring the Lockwood act constitutional is a signal

victory for primary reform in that State.[1] The act applies to all cities having a population of 10,000 or more inhabitants for the selection of delegates to conventions. The main points of the decision may be summarized as follows: The law is not local, because "the classification is one founded upon some real and substantial, not fanciful, distinction, suggested and prompted by reason and experience." The election provided for by the act comes within the purview of the Constitution as an election authorized by law. The court "sees no objection to the legislature providing for party elections, and limiting the electoral privilege to party members." The limitation of the benefits of the act to the stronger parties is no infringement or denial of a constitutional right. It is a reasonable regulation, "justified by the substantial difference in party conditions," and aiming to secure a free and equal ballot, as in case of the analogous provisions found in our Australian ballot laws. The rights of political parties are not invaded because "party management is of such vital importance to the public and the State, that its operation, in so far as it respects the naming of candidates for public office, is an object of special legislative concern, to see that the purposes of the Constitution are not perverted, and the people shorn of a free choice." The legislature may regulate the appointment of primary election officers, and the election of party committeemen, as well as fix their terms of office and specify their duties. The test of party affiliation is reasonable and valid. "The expense is incident to and in pursuance of a general law of the State, although it

[1] Ladd v. Holmes (Oreg.), decided Nov. 25, 1901.

operates locally, and is properly a county charge." The court by thus disposing of these difficult questions has set a most important and encouraging landmark in the constitutional history of primary election laws.

In California we have an excellent illustration of what must happen where State Constitutions prevent the enactment of good primary legislation. After three adverse decisions, which completely cornered the legislature by interposing the Constitution between that body and desired primary election laws, there was nothing else to do but to amend the Constitution. This was so effectively carried out, that there can no longer be any difficulty. It is safe to say, that even though the courts of other States should follow the example of the California courts and declare primary election laws unconstitutional, the time must soon come when legal modifications will be made, and constitutional amendments, if necessary, will be enacted, enabling the public to enjoy the benefits of good legislation wherever it is to-day being denied to the people through the intervention of constitutional law.

SUMMARY OF IMPORTANT POINTS RAISED IN JUDICIAL DECISIONS BEARING UPON PRIMARY LEGISLATION.

General Construction of a Primary Election Law.

A remedial statute for the correction of abuses, and to secure against fraud and corruption, is to be liberally construed. The presumption is in favor of such an act, and the unconstitutionality must not be left in doubt. An objection that the law violates principles of republican government is insufficient, unless it violates the Constitution. Cooley on Constitutional Limitations, p. 202 (6th ed.).

The settled conviction that the safeguarding of our institutions requires the untrammeled exercise of the franchise, and that the result be protected from fraud, has led to much legislation during the present generation, and latterly to legislation that aims to secure these results by regulating primaries. People ex rel. Coffey v. Dem. Gen'l Com. of Kings County, 52 Hun (N. Y.), 170.

By reason of the legislature having adopted the act, there goes with it a presumption that it is within the pale of the fundamental law, otherwise it would not have met with the approval of that body; and in every case where there exists, when proper tests have been brought to bear, a rational doubt upon the subject it should be resolved in favor of its validity. Ladd v. Holmes, 66 Pac. Rep. 714 (Oreg. 1901).

Exclusion of Small Parties.

The election laws that confine nominations by convention method to the political parties that cast a certain percentage of the vote, are upheld as constitutional in the following cases: State v. Black, 54 N. J. L. 446; State ex rel. Plummer v. Poston, 58 Ohio St. 620; State v. Anderson, 42 L. R. A. 239; Higgins v. Berg, 42 L. R. A. 245; Miner v. Olin, 159 Mass. 487; De Walt v. Bartley, 146 Pa. St. 543.

Elections Authorized by Law.

Primary elections are not within the term "all elections authorized by law," as found in State Constitutions. Mayor v. Shattuck, 19 Colo. 194; People v. Cavanaugh, 112 Cal. 647; Nominations of Public Officers, 9 Colo. 631; Com. v. Wells, 17 W. N. C. 164; Leonard v. Commonwealth, 112 Pa. St. 622.

In spite of the adjective "all," the word "elections" has a restricted meaning in the term "all elections" as decided in case of the analogous term "all officers." David v. Portland Water Com'rs, 14 Oreg. 98; State ex rel. v. George, 22 Oreg. 152; Wheeler v. Brady, 15 Kan. 30; Winans v. Williams, 5 Kan. 133; In the matter of Gage, 141 N. Y. 112. The word "elections" is also said to be used in a restricted sense in: Plummer v. Jost, 144 Ill. 68; State v. Cones, 15 Neb. 444; Belles v. Burr, 76 Mich. 1; Board v. State, 70 Miss. 769; Buckner v. Gordon, 81 Ky. 1; State v. Parry, 52 Kan. 1.

Because of differences in primary election laws, constitu-

tional provisions, and methods of legal reasoning, several courts have in recent decisions come to what seems a most logical conclusion, that primary elections are "elections authorized by law," and subject to all constitutional provisions governing such elections. "It seems hardly a matter of serious controversy that the elections presently provided for are such as are authorized by law. They are, in practical effect, required to be held by all parties polling a 3 per cent. vote, as no convention nomination can be legally made unless the delegates attending such convention from the precincts included within a city falling within the class prescribed, are selected at such primary election. The judges of election appointed under the general law are authorized and required to preside at the primary election, and to count and certify the vote; and the county clerk, a public functionary, is, with the assistance of two justices of the peace, required to make abstracts from the returns, and thereupon to publish the result, the delegates receiving the highest number of votes being entitled to sit in the convention, and the election is held at public expense. With all this there is certainly an election authorized by law." Ladd v. Holmes, 66 Pac. Rep. 714 (Oreg. 1901); also, Marsh v. Hanley, 111 Cal. 368, 43 Pac. Rep. 975 (1896); Spier v. Baker, 120 Cal. 370, 52 Pac. Rep. 659 (1898). "That a compulsory primary law, such as this, forms a part of the general election laws of the State, is not, we think, debatable, and has been distinctly decided." Britton v. Board, 61 Pac. Rep. 1115 (1900).

Expense.

The expense in case of a local law may be placed upon the county. The State is interested in the object to be secured by a primary election law, the protecting of the elective franchise from fraud, and the county may properly be designated by legislative action for carrying out the purpose, providing no existing debt is shouldered upon the county. Simon v. Northrop, 27 Oreg. 487; Johnson v. Yuba Co., 37 Pac. Rep. 528; Marion Co. Com'rs v. Center Township, 107 Ind. 584. "The expense is incident to and in pursuance of a general law of the State, although it operates locally. The election is for the selection of precinct delegates and officers, which is properly a county charge." Ladd v. Holmes (Oreg.), Nov. 25, 1901.

Members of weak political parties which are not included in a primary election law may be taxed to pay the expense incurred by such a law. The right of suffrage and taxation have no relation to each other except through specific legislative enactment. The public good justifies the taxation of all citizens. Black, Con. Law, 337, 339; Cooley, Const. Lim., 599 et seq.; Cooley, Taxation, 107.

What Constitutes a Local Act?

"A statute which is plainly intended to affect a particular person or thing, or to become operative in a particular place or locality, and looks to no broader or enlarged application, may be aptly characterized as special and local." Ladd v. Holmes (Oreg.), Nov. 25, 1901. Also, State ex rel v. Mitchell, 31 Ohio St. 592; State ex rel. v. Anderson, 44 Ohio St. 247; Mott v. Hubbard, 59 Ohio St. 199; Nichols v. Walter, *supra;* Edmonds v. Herbrandson, *supra;* Devine v. Commissioners, 84 Ill. 590; Commissioners ex rel. v. Patton, 88 Pa. St. 258.

A primary election law applying only to cities does not discriminate against the counties, and is general in character. All who fall within the class or the conditions covered by its terms are protected by its safeguards and made amenable to its penalties. Such a law confers equal rights on all citizens of a State, or subjects them to equal burdens, and inflicts equal penalties on every person who violates it, and is an equal law, though no one can enjoy the right, be subjected to the burden, or infringe its provisions, without going to or being in a particular part of the State. State v. Griffin, 39 Atl. Rep. 260; In re Oberg, 21 Oreg. 406; Soon Hing v. Crowley, 113 U. S. 70; Parbeir v. Connelly, 113 U. S. 32; Railroad Co. v. Beckwith, 129 U. S. 26; State ex rel. v. Frazier (Oreg.), 59 Pac. Rep. 5; State v. Frazier, 36 Oreg. 178.

"A law may be general, however, and have but a local application, and it is none the less general and uniform because it may apply to a designated class if it operates equally upon all the subjects within the class for which the rule is adopted; and in determining whether a law is general or special, the court will look to its substance and necessary operation, as well as to its form and phraseology. * * * The classification may not be arbitrary. * * * The mark of distinction must be something of substance, some attendant or inherent pecul-

iarity calling for legislation suggested by natural reason of different character to subserve the rightful demands of governmental needs." Ladd v. Holmes (Oreg.), Nov. 25, 1901. Also State v. Black, 54 N. J., L. 446; Edmonds v. Herbrandson, 2 N. Dak. 270; Suth. Stat. Const., 127, 128; Nicholas v. Walter, *supra;* Evans v. Herbrandson, *supra;* State ex rel. v. Hammer, 42 N. J. L. 435; People ex rel. v. Board of Supervisors, 185 Ill. 288; State ex rel. Van Riper v. Parsons, 40 N. J. L. 1.

The density of population in larger cities and counties furnishes a proper basis for their reasonable classification for the purpose of election regulations. Commonwealth v. McClelland, 83 Ky. 694; People v. Hoffman, 116 Ill. 587; People v. Board of Supervisors, 185 Ill. 288; Hargrave v. Reitz, 62 Ind. 159; City of Indianapolis v. Navin, 151 Ind. 139; Tuttle v. Polk, 92 Iowa, 433.

A classification of cities or counties for purposes of election regulation based upon reasonable grounds, is not objectionable, although but one city or county is within the class. Smith v. Doggett, 14 Ind. 442 (1860); Groesch v. State, 42 Ind. 547 (1873); Hanlon v. Board of Commissioners, 53 Ind. 123 (1876); McLaughlin v. B. & L. Ass'n, 62 Ind. 264 (1878); State ex rel. Hargrave v. Reitz, 62 Ind. 159 (1878); City of Indianapolis v. Navin, 151 Ind. 139 (1897); Bell v. Maish, 137 Ind. 226 (1894); McAnnich v. Miss. & Mo. R. R. Co., 20 Iowa, 338 (1886); Haskel v. City of Burlington, 30 Iowa, 232 (1870); Iowa R. R. Land Co. v. Soper, 39 Iowa, 112 (1874); Tuttle v. Polk, 92 Iowa, 433 (1894); State v. City of Des Moines, 96 Iowa, 521 (1896); State ex rel. Witter v. Forkiner, 28 L. R. A. 206; Welker v. Potter, 18 Ohio St. 85; Bronson v. Oberlin, 41 Ohio St. 476; State v. Toledo, 48 Ohio St. 211; People v. Wallace, 70 Ill. 680; People v. Onahan, 170 Ill. 449 (1897); People v. Hoffman, 116 Ill. 587; People ex rel. Green v. Com'rs of Cook Co., 176 Ill. 576 (1898); People ex rel. Akin v. Board of Supervisors, 185 Ill. 288; Kilgore v. Magee, 85 Pa. St. 401 (1877); Wheeler v. Philadelphia, 77 Pa. St. 328 (1875); Seabolt v. Com'rs, 187 Pa. St. 318 (1898); Commonwealth v. Buckley, 9 Pa. Dist. Rep. 381; Van Riper v. Parsons, 40 N. J. L. 1 (1878); State ex rel. Rutgers v. City of New Brunswick, 42 N. J. L. 51 (1880); State ex rel. Bumsted v. Govern, 47 N. J. L. 368 (1885); State v. Mayor, etc. of Jersey City, 33 Atl. Rep. 740; State ex rel. Varney v. Kramer,

41 Atl. Rep. 711 (1898); In re Application of Thomas Church, etc., 92 N. Y. 1 (1883); People v. Squire, 107 N. Y. 593 (1888); People v. Dunn, 52 N. E. Rep. 572 (1899); Darrow v. The People, 8 Colo. 417 (1885); Thomason v. Ashworth, 73 Cal. 73 (1887); Tulare Co. v. May, 118 Cal. 303 (1897); State ex rel. Board v. Cooley, 56 Minn. 540 (1894); Nichols v. Walter, 37 Minn. 264 (1887); State v. Spande, 37 Minn. 322 (1887); State ex rel. Manning v. Higgins, 125 Mo. 364 (1894); Dunne v. Kansas City Cable Ry. Co., 131 Mo. 1 (1895); State ex rel. Garrett v. Arnold, 136 Mo. 446 (1896); City of St. Louis v. Dorr, 145 Mo. 466 (1898); Glover v. Meinrath, 133 Mo. 292 (1895); Johnson v City of Milwaukee, 88 Wis. 383 (1894); Boyd v. Milwaukee, 92 Wis. 456 (1896); Hughes v. Lagard, 43 Pac. Rep. 442 (1896); Harwood v. Wentworth, 162 U. S. 547 (1896); Holmes & Bull Furniture Co. v. Hedges, 13 Wash. 696 (1896); Commonwealth v. McClelland, 83 Ky. 694; Stone v. Wilson, 39 S. W. Rep. 49 (1897); State v. Frank, 83 N. W. Rep. 74; State ex rel. Wheeler v. Stuhl, 52 Neb. 209; Hann v. State, 54 Pac. Rep. 130 (1898); Mitchell v. City of Topeka, 54 Pac. Rep. 292 (1898); Codlin v. Kohlhousen, 9 N. M. 565; Peterson v. State, 56 S. W. Rep. 127.

The penal provisions of a general statute or of an otherwise valid local statute, are not obnoxious to the constitutional inhibition of local laws punishing crimes and misdemeanors. State v. Sly, 4 Oreg. 277; State v. Bergman, 6 Oreg. 341; Marmet v. State, 45 Ohio St. 63; State v. Pond, 93 Mo. 606. "The offenses alluded to are creatures of and incident to the act, and it being general the punishment was properly provided for." Ladd v. Holmes (Oreg.), Nov. 25, 1901.

CHAPTER XI.

THE EXPENSE OF DIRECT PRIMARIES.

The expense of holding primary elections may be met either by the political parties or by the State. Where primaries are made a public expense to be paid out of the general treasury the cry is raised that an unjust burden is being placed upon the tax-payer; that the caucus and convention system costs the people of the State nothing whatever. Before going into the merits of this question it may be well to see how the expense arises, and what specific methods are resorted to for its defrayal.

The source of the expense in case of primary elections is very similar to that of general elections. Notices must be published, blank forms and sample ballots must be issued, booths, official ballots, poll books and other stationery must be supplied, and primary election officers must be paid.[1] The method by which this expense is met depends largely upon whether the primary system is optional or compulsory. In general it may be said that where mandatory systems are established the expense is public, and where primaries are optional the expense is borne by the party which adopts the system.

Where the party pays the expense the law may provide how this is to be done, or it may leave the matter entirely with the party. In the former case the law generally

[1] Aside from this there are certain more or less private and personal expenses borne either by the candidates or by leading party spirits, or both, arising from the publication of partisan pamphlets and other campaign material, the hiring of speakers, and, in general, from the vigorous prosecution of the party campaign.

regulates expenditures to some extent by fixing the salaries of primary election officers, and by providing for the proper keeping of accounts; and also by indicating how the necessary funds are to be provided. This is generally done through the assessment of candidates, either for a fixed fee, for a graduated sum, or for a certain per cent. of the salary of the office for which the candidate runs. Where the statute leaves the matter of expense entirely to the party the rules may fix a permanent sum which is the same for all offices, or is graduated according to salary. Where annual assessments are made by the party committee,[1] the sum may be arbitrarily fixed, or it may be a certain per cent. of the salary of the offices. In some cases provision is made for the disposition of a possible surplus. It may be turned into the general election funds, or it may be refunded to the candidates, or their legal representatives,[2] or turned into some special fund, such as the school fund.[3]

Where the expense of a direct primary system is met out of the public funds it is paid for by the political division in which the system operates. If used only in a city, the city treasury supplies the money; if in a county, the county treasury; if in a State, each division pays out of its public funds those expenses which are entailed to its officers in carrying out the provisions of the law, the principle being the same as in case of general elections. Where primaries are a public expense, uniform or graduated fees may, nevertheless, be required from candi-

[1] Kentucky, Tennessee, Indiana, West Virginia, Missouri, South Carolina, Georgia, Florida, Alabama, Mississippi, etc.

[2] Missouri law, 1897.

[3] Missouri, law of 1891.

dates, as under the Minnesota, Michigan, Oregon, and Missouri laws passed in 1901.[1]

Sometimes where a law is compulsory, and a public expense, it is unpopular at the outset with the country districts where politics still happens to be pure, because it imposes, what seems to be, unnecessary taxation. If a compulsory law makes the primaries a party expense, as does the Indiana law of 1901, the danger lies in the oppression of all minority parties whom defeat stares in the face, and which will have considerable difficulty in getting a ticket into the field, because candidates will be slow in coming forward in a minority party, and pay heavy assessments only to be defeated at the polls. The Indiana law applies to only two counties in which the Democratic and the Republican parties are quite well balanced, so that this objection loses some of its force. In Randolph county of that State such a law would do a high injustice to the Democratic party which is in a hopeless minority there.

Where a law establishes optional primaries at the public expense it may happen that one or more parties are forced to pay for the direct primaries of another party which may have adopted the law. If optional primaries at the party's expense are provided for, conditions seem fairly well met; but the difficulty lies in forcing the adoption of an optional law in cities where party power is lodged in the hands of a "machine" which would be destroyed were mandatory primaries to be instituted. A compromise of these various alternatives might be

[1] Direct primary bills introduced in the legislatures of Michigan, Maryland, and North Dakota provided for fees equal to a certain percentage of the salary of the office.

effected by throwing proper legal safeguards around the indirect primaries of the country, and making direct primaries optional there, and a party expense, while in the cities the direct primary might be made mandatory and a public or city charge. However, since direct nominations have been found so generally popular in rural districts, and also for the sake of uniformity and the proper operation of a system, it is desirable to have a compulsory law making the primaries a public expense. This is a fair way of doing, because it taxes everybody for everybody's own good. Almost without exception the bills introduced into the legislatures of some eighteen States during the current year incorporated the principle of mandatory primaries at the public expense.

The assessment of candidates possesses a strong element of injustice. It is often a heavy burden as imposed by political parties without limit fixed by law. In Kentucky the mayor of Louisville was assessed $250 at one time, while the judge of the circuit court and the congressman were each assessed to the extent of $500. The requirement of a moderate fee to insure a *bona fide* intention to run has been in common use,[1] and is an improvement over the assessment plan. It, however, frequently fails to accomplish its purpose, and enables the "scalawag" to buy his way upon the nomination ticket, only to be bought off again by some other candidate from whom he would draw most votes. It has the advantage of reducing the public expense of the primaries to some extent.

Those laws which require no fees but only nomination

[1] Minnesota, Missouri, Michigan, and Oregon under the Morgan law, are examples.

papers properly signed by a certain per cent. of the voters of the party place the entire expense upon the tax-payer, and give the opposition an opportunity to cry "expense." We are getting along very nicely as it is, runs the argument, and our convention system does not cost the tax-payer a cent. Neither of these statements can be accepted. The first has already been shown false, and the second is an admission of ignorance as to the workings of politics, or lacks sincerity. That the caucus and convention system does cost somebody large sums of money cannot be denied. To keep up the complex organization and to run the many caucuses and conventions costs much money. There are the expenses of all delegates to be paid for attending the conventions, not to mention the days of time spent. There is other legitimate business to be conducted to keep the huge nominating machinery going. There are "machine" agents to be paid and delegates to be bribed. All these expenditures, whether good or bad, cause heavy drains upon the bank accounts of some people, and these accounts must be replenished from some source. Charity hardly enters into politics in that form. To be sure there are some public-spirited men who are ready to give large sums to help defray expenses of this kind. But the men out of whose pockets most of the money goes are in politics not merely to give, but also to receive in such a manner that there will be "something in it."

The men who manipulate corruptly the caucuses and conventions will seek recompense somewhere. Through some channel or other the expense will eventually fall upon the people, either through unscrupulous public officials who fill the purses which they had emptied in

buying their nominations from the "machine," or through the distribution of patronage, or by recourse to some other methods in which the politicians are versed. In one way or other we may be sure that the people are ultimately made to pay for the expense of our caucuses and conventions. The amount thus being indirectly taken out of the tax-payer's pocket, we may also feel assured, is likely to be far in excess of what the outlay would warrant. The politician is not by nature severely economical, and all the expenses of his living must be met from one source or other.

In case of the direct primary, whatever expense there may be is fairly contracted in the interests of all, and on exactly the same principles as in case of our general elections, may be met out of the public treasury. The expense of a direct primary system embracing the whole State of Wisconsin would be surprisingly small, and has been estimated at $30,600, itemized as follows: Publication of notices in 140 newspapers at $40 for each paper $5,600; printing 1,000,000 official ballots $4,500; clerks and inspectors in 1,300 country precincts $13,000; additional inspectors required in 800 city precincts $7,500.[1] This estimate was based upon a proposed system of *concurrent* primaries. Where parties do not all hold their primaries on the same day and place and at the same hours, the expense is considerably more.

The expense of the convention system of the same State was estimated as follows: In each election year there are held at least 6,000 caucuses, 300 assembly and senatorial conventions, 25 congressional conventions, 250

[1] Address of H. C. Adams before Wisconsin Committee on Privileges and Elections (1901).

county conventions, and 3 state conventions. The state conventions are attended by at least 3,000 delegates at a minimum expense of $25 each. This places the cost of state conventions at $75,000. Assuming that the cost of attendance to delegates to the remaining 575 conventions is no greater, though it probably is twice that amount, then the cost of the present system in Wisconsin would be about $150,000 in an election year, or about five times the estimated expense of a direct primary system. This includes no estimate of money "spent on" delegates to influence their action in conventions, which sometimes assumes huge proportions.[1]

The small cost per voter of the primary system still further brings out the insignificance of the expense item. At the last election 442,894 votes were cast in Wisconsin. This puts the cost of the primaries at about seven cents per voter. In return for this small outlay he is enabled to forego the necessity of attending five or six different caucuses each election year, and of spending considerable time at each. He is enabled to vote for each and every candidate of his choice, all in the space of a few brief moments. All this for *seven cents!* What if it cost many, many times that sum? The citizen in a republic can afford to pay whatever sum is necessary to secure equal voice in making the laws, for this means equal taxation, equal privileges—good government.

He who objects to paying this meagre sum for the sake of good government does not deserve to enjoy its

[1] In one county convention held to send delegates to a senatorial convention in 1900, a sum of money, placed at seven thousand dollars by those who participated in the contest, is said to have been spent to defeat the renomination of a senator who had voted to increase railroad taxation in the preceding session of the Wisconsin legislature.

blessings. He who objects to a direct primary law upon the ground of expense declares himself willing to forego his rights as a voter, and his duties as a citizen, for the false profit of a few paltry cents. He who sounds the cry of an oppressed tax-payer in order to defeat a direct vote system, forgets that its purpose is the maintenance of institutions which are sacredly enshrined in the heart of every loyal American, and which were bought by the blood of his ancestors. For such an one it is meet to remember that institutions worth dying for ought also to be worth paying for.

CHAPTER XII.

ARE DIRECT PRIMARIES WORTHY OF A TRIAL?

Perhaps the reader who has borne with the author thus far and has followed the discussion patiently, is not quite prepared to answer affirmatively to the question: "Are direct primaries worthy of a thorough trial?" It is true that in the course of the preceding chapters many suggestions were made respecting the possibilities of adverse experiences under a direct vote system, even though it be fairly complete, as was that of Hennepin county, Minnesota. When we add to this, partisan newspaper discussions and hostile magazine articles, as well as malicious verbal misrepresentations and concocted facts, such as are met with everywhere, it is not at all surprising that the thoughtful and conservative man shrinks from committing himself in favor of so far-reaching a reform as that of the direct primary.

A little reflection along general lines upon what has already been presented in the more or less devious form of particulars, may aid in the formation of some definite conclusion. What have we against direct primaries? Where are the sources of adverse experience? As we scan the field of practical experimentation in quest of untoward facts, the eye falls upon the "Old Crawford System" and its successors in Pennsylvania; it rests upon the southern plans surrounded by troublesome difficulties; it fixes its gaze upon Cleveland, Ohio,—that source of so many "objections" to direct primaries; then

it wanders about through West Virginia, Tennessee, Indiana, Kentucky, Kansas, Nebraska, and Minnesota, but in vain does it seek for unfavorable results of a real and substantial character. Only here and there are solitary instances of adverse experience, such as one might expect to meet under any system in the first stages of its application.

We return to analyze conditions briefly in places from which some adverse criticism may be quoted by opponents of the reform. The Crawford county system of Pennsylvania was but a partial success. Why? We recall that this State has no direct primary law. The system was entirely extra-legal—a mere loose bundle of party rules. It could be moulded for good or for bad by the hands of the party authorities, as easily as could the party-regulated caucus or indirect primary. The trial of the principle in Pennsylvania was largely worthless except to prove the necessity of a complete, statutory system.

We turn to the South, and we find similar systems, quite as extra-legal in character as that in Crawford county, governed, where governed at all, by verbal rules instead of written statutes. Parties are largely unrestrained. Party institutions are left exposed to the prejudices, preferences, and selfish interests of corrupt men. "Machine" politics is permitted under the cover of law to monopolize party organizations, and to control the primaries at will. Not only this, but political conditions prevent the proper and necessary struggle between rival parties in the campaign. The Democratic party is ever ascendant. Once in power always in power, pictures the situation of the Democratic party in the South owing

to conditions which are everywhere recognized to-day as having no connection with primary reform. Here also then, no fair trial has been obtained. No results worthy of much weight have been achieved.

Cleveland, Ohio, is claimed as an instance of failure. The opponent of reform here finds an assortment of convenient facts. He presents the argument of a corrupt press. He points to the viciousness of deceptive journalism. He pictures a medley of factional politics, of broken party organization, of weak candidates, and of municipal corruption. His claim is partially true. But while it sounds well, it reasons ill. It must be admitted that the direct primary has not been generally satisfactory in Cleveland; but what is the explanation for its shortcomings? The law which governs the system is optional and very imperfect. It leaves many of the most important rules to be prescribed by the party. Cleveland is a center of stormy factional politics. There is no guarantee against the invasion of parties. No proper registration and enrollment system is employed. And no provision is made for the selection of party committeemen at the primary, thereby subjecting party organization to factional control, and exposing the entire conduct of the primary to the bitter discordance of party dissensions and factious conflicts. Yet, in spite of these grave defects, some very good results are, in many cases, attained. General interest is aroused, and a large vote is polled even though the primary elections are not held on registration day. The voters of this county have never been induced to give up this system, imperfect as their law is, and to go back to the caucus and convention plan of nomination.

Our conclusion is, therefore, that where adverse experiences are encountered, the fault does not seem to be to any material extent with the principle of direct nomination itself, but rather with the imperfect systems in which that principle is incorporated, and under which it is compelled to operate at a disadvantage.

What can be said where favorable results are met? We turn to Kansas, Nebraska, Arkansas, Indiana, Iowa, Tennessee, West Virginia, Maryland, North Dakota, South Dakota, etc., where party systems are employed, which in many cases are entirely free of legal control, and yet afford general satisfaction, and strengthen their hold upon the people. That the difficulties which, as was seen, frequently surround party systems of direct primaries, do not demonstrate themselves to any disturbing extent in these States, is due largely to the more equitable and calm political conditions which prevail there, and to the nature of the party rules under which the systems operate. In many instances, as in Kansas, Arkansas, Indiana, and Tennessee, the periods of continuous trial have been long and the results grow ever more favorable with each succeeding year.

But far more important, and by far more convincing, are the results which were attained in Kentucky and Minnesota. Here the political conditions were such as invited a good test. The optional Kentucky law, while incomplete and not lacking in defects, is good. It provides an excellent system of enrollment through which interference from rival parties is largely prevented. Such party rules as are necessary to supplement the law, are in the main strong and effective, and while the system is not entirely satisfactory it is declared to be far su-

perior to the convention plan. Its failings, as was pointed out in the discussion of this State in Part II, are due to the imperfections of the law of 1892 under which the system is still operating.

The strongest argument in support of direct primaries may be drawn from Minnesota. The circumstances of the trial were almost ideal here. The more important conditions for a fair test were all present. The principle of a direct vote was incorporated in a complete legal system.[1] The parties were not permitted to act under their own rules, but were compelled to conduct their primaries in accordance with law. The county in which the trial was made was populous and contained a large city as well as rural population. The offices for which nominations were made ranged from the highest to the lowest, excepting state departments. The system was inaugurated in one of the worst centers of "machine" politics in the State. Municipal government was a spoils for boodle aldermen. Bitter opponents, who misrepresented facts and distorted results, were met on every side.[2] These were severe conditions for a trial, but success, should it come, would all the more eloquently prove the strength of the system. And success did come. It exceeded the expectations of many of the most enthusiastic reformers. An unsurpassed vote was polled at the primary. Boodle aldermen were dislodged, and "machine" rings and clubs forced to disband. Though but one trial was given to this famous Hennepin county law, the test seems to have been so decisively favorable as to lead to

[1] With the exception of provisions for the maintenance of party organization.

[2] The grand jury fake, for example. See Milwaukee Sentinel June 1, 1901, and the Evening Wisconsin June 5, 6, 1901.

the enactment of the present law embracing the entire State, as its predecessor had embraced one county.

The story of the Minnesota direct primaries and their triumphant advance reads like a romance. Facts support each step in the story, and it is their merit which sustains the tale. It is true, the Minnesota experience, as every other, has been confined to the limits of one county, but there were included in this one county, nominations for members of congress, for both houses of the legislature, as well as for county and city offices. Some of the difficulties of a platform, of party organization, and of candidates which arise when the principle is applied beyond the bounds of one county, have not yet been met. Nothing absolute or even definite can be said respecting a comprehensive system. All that we have to go by is experience in counties and cities, and there the results have been sufficiently favorable to warrant an extension of the plan so as to embrace the entire State, and include legislative offices, or even the heads of our executive departments. Minnesota, as was seen, has already adopted the system for all legislative offices, and its workings will be watched with intense interest everywhere. Why a plan applied to all officers of the State should fail would be difficult to prove, and could be decided by experiment alone. The general satisfaction given by direct nominations up to date, certainly argues for their success on a still broader scale.

We are often reminded that even though nominations by direct vote have been made since 1868 their general advisability has not been definitely established. True, we are still in the stage of experimentation, but it is a most encouraging and a most progressive one, and one

which bids every good citizen to carry forward the encouraging work. Since its first trial the direct primary has been extended to many States, as was seen, and has held its own wherever it has gone. Not one instance was discovered, in the course of this study, where, after once being fairly established, it had been abandoned. There is no reason for believing that the direct vote system is an exception to the general rule that we keep what is good and throw away what is bad. Hence, when opponents attempt to prove upon fair grounds of past experience that nominations by a direct vote of the people are impolitic, they are quite certain to find an impossible task upon their hands.

But, says the friend of the caucus and convention system, where the people nominate, the most unrepresentative men may get into office. There may be instances where nine men run for an office and the winner receives less than one-sixth of the party vote. A corporation may dictate nominations, and a "machine" may place its candidates in office in a race of bare pluralities. Deceptive journalism may distort the facts and defeat a good man. There may be a complete geographical concentration of candidates. The city vote may dominate the country vote, and may nominate none but its own city candidates. The nationality of candidates cannot be considered, and a complete ticket of Irishmen may be nominated by a German electorate. A rich and incompetent fellow may defeat a poor but able man. A county clerk may win out because, as real estate dealer, his name is known to the public, and has been staring at passers-by from many a sign in many a lot for many a day. All this may happen, says the opponent, and yet you would declare direct primaries a success and worthy of further trial!

It must be admitted that these are the adverse possibilities of direct primaries. But how often will they present themselves? In the preceding discussion of Part III, the aim has been to point out their probability, and that is the basis upon which the weight of evidence is favorable. In answer, for example, to the contention that there will be more pronounced minority representations under direct primaries, it can only be said that this *may* sometimes be the case, but that where valid comparisons have in any way been possible, the general experience has been for candidates to be nominated by a much larger vote than under the present system, so large in fact, that, in many cases, it has reached a majority.

It must also be borne in mind that the unfavorable possibilities which were enumerated in the preceding chapters are by no means all possible under every system, in every State, or county, at every primary election. They comprise rather a collection of all the unpropitious features, as gathered from experience with a countless variety of direct primary systems, operating under widely different political, social, and economical conditions of life. Just what difficulties may be encountered in each particular case where a new system is tried is beyond prediction, except in a general way, but it is safe to say, that, under any ordinary circumstances, but a comparatively small number of the objectionable results which have been enumerated can possibly manifest themselves at any one time.

When the opponent of reform in eloquent words piles up argument upon argument in a towering mass, it seems as though direct primaries must be a hopeless failure. He, however, gathers his unfavorable evidence, as

already indicated, from many localities, scattered over a wide field of experience, and skilfully builds it into a monstrous and apparently crushing opposition. If these adverse conditions and unfavorable forces, as the opponent pictures them, could, under any conceivable circumstances, be made to operate at once in any particular locality, they would undoubtedly bring destruction to any direct vote system that the ingenuity of man can devise; but we are not dealing with an imaginary situation. The problem is an eminently practical one, concerned alone with natural and ordinary conditions of life.

For the purpose of illustrating this unfair method of opposition, the direct primary may, in imagination, be likened to the mountain climber, who as he scours the sides of cliffs finds streams obstructing his path. One by one he successfully fords each in its turn, and takes from each a drink of life. Far down at the foot of the mountain these same streams are gathered in a mighty reservoir built by the hand of man, and the accumulated waters flood the valley as a sea. Here a crossing would bring death, and were the huge volume of water to be liberated all at once destruction would speed away all of life in its path. Wherever the primary goes it likewise finds obstacles in its way, which, however, do not defeat its purpose, but point out the necessity of improvement, and through discovered weakness add more strength. But were it to be put in operation where the hand of the opponent has constructed artificial conditions of life out of all the sources of adverse experience that could possibly be accumulated, the case would be hopeless and sunk in miserable failures.

The progress of the direct primary ought not to be

stopped as long as it brings us something better than what we now enjoy. Its course ought not to be strewn with stumbling blocks as long as it successfully overcomes the difficulties which beset its onward path. Nor ought we to lend a hand of prejudice in an over-enthusiastic attempt to pave its way. Justice and reason demand of all a plain duty, to step aside and let it come; to let it work its way unhampered; to give it a fair trial.

The author shares with his readers in an aversion to new-fangled innovations and to unreasoned and mischievous experimentation in political institutions, and is ready, at all times, to encourage a proper conservatism, but he is as decidedly opposed to that false and indefensible disposition to maintain existing institutions upon largely unreasonable and sentimental grounds in the face of successful experience which goes to demonstrate the practicability and the wisdom of a change, and which has in store the promise of much good.

CHAPTER XIII.

THE ESSENTIAL FEATURES OF A GOOD DIRECT PRIMARY LAW.

In order that the principle of direct nomination may be put to a fair test it is necessary not only to permit it to be placed on trial in one form or another, but it must be incorporated in the best statutory system that can be devised upon the basis of past experience. There will be presented in this chapter what the writer believes to include the essential features of such a system. It may be well in this connection to recall the suggestions made in an earlier chapter to the effect that political conditions, constitutional provisions, Australian ballot laws, and ideals and customs of party action, vary widely in the different States, and make a uniform system impossible, so that the scheme which will be explained here in its larger outlines must not be looked upon as a special prescription for primary evils in each and every State, but rather as a practical model which may serve as a guide to the direct primary legislator, and may furnish a working basis for the construction of a particular direct vote system.

In order that a law may be complete, and may receive a decisive and conclusive trial, it must embrace the entire State. This is necessary because our whole political organization centers about the central or state government. In state politics local politics works itself out. The state convention caps our commonwealth nominating machinery. All political activity, all political or-

ganization, all political institutions within the State converge to this common head, which introduces unity and a controlling purpose into the whole system. The great political leaders do not move in the localities. Their field is the State. Political combinations reach out largely from a central stronghold, and spread their influence not only over one county or one district, but over the entire State. Hence, to institute a direct primary system, applying to but one county, or to none but county and city officers in all the counties of the State, is to apply but a partial remedy, which while it would undoubtedly yield better results than are attained under the convention system, would, nevertheless, leave the reform imperfect and incomplete. The abuses in our state governments would remain,—a menace not only to the cause of good government, but also to the successful operation of the local systems.

It is because of the comparatively unimportant reform effected by local systems that "machine" politicians are willing partially to satisfy public clamor by allowing a compromise county or city scheme to be inaugurated, as was the case in Minnesota in 1899, and in Oregon and Michigan in 1901. But such systems operate at a great disadvantage because "machine" and corporation agents will strain every nerve to discredit the principle upon which they are based and thus to prevent their extension to the entire State, where they would strike a vital blow at the corrupt powers which ever besiege our legislative halls and worm their way into the administrative departments in our Commonwealths. A local system would therefore at best be but an imperfect reform, and would run the risk of being misrepresented, shrewdly

discredited, or even defeated entirely by being embodied in imperfect legislation through the scheming opposition of professional politicians.

Fall primary elections ought to be held at a sufficiently long time before the general election to permit the various parties properly to prosecute their campaigns, and to enable the voter to become thoroughly familiar with the relative merits of candidates of the different parties nominated at the primaries. Sixty days seems to be generally suggested as the proper interim. In case of spring elections which cover but a narrow local area, and are confined to smaller and denser groups of population, the public is able to become acquainted with the qualifications of the candidates in a briefer space of time so that two or three weeks would probably be a sufficiently long interval.

No party ought to be permitted to participate in the primary election which has only a local following, or which is composed of a few fanatics, or radicals, and their immediate friends. Nor ought any party to be excluded which champions a reasonable and dignified cause, and which has given evidence of a fairly widespread membership. The exclusion of weak local parties is justifiable on the ground of the expense which their participation would involve, and also because the numerous party tickets and the many lists of candidates would tend to confuse the voter and scatter his attention for useless reasons. Just what percentage of the total vote cast at the last election ought to be represented by a party in order to entitle it to a place upon the primary election ballot must necessarily vary with the peculiar political conditions of each State, and in actual experi-

ence has ranged from one to ten or fifteen per cent., although the more common practice fixes it at from three to five per cent. No party ought to be excluded which may reasonably be expected to be a deciding factor in determining the result.

It is desirable to have all parties participate in the primary election on the same day at the same time and place. Concurrent primaries greatly reduce the expense to the State where it is met out of the public treasury; permit of the use of the open primary system of voting upon the Australian ballot plan; and considerably lessen the difficulties of their proper management.

The notices of primary elections must be published long enough in advance to enable candidates to secure the required number of signatures for their nomination papers, and to file these papers in due season for the proper publication of the lists of candidates, and for the printing and distribution of sample and official ballots. But the notices ought not to be given out so early as to permit the people to forget all about the primary elections before they are held. A two months' notice is suggested.

It is obvious that a primary election law must not permit any and every person who has aspirations to public honors to run for a nomination unless he can furnish well-founded evidence of a desire on the part of a reasonable proportion of the people to nominate him. If everybody were free to try for a nomination, primary election ballots would be unwieldy in size and expensive in preparation; the voter would be confused with a long list of names; and votes would be scattered among many candidates, thereby giving rise to pronounced minority nominations which would enable "machines" and cor-

porations to dictate in the selection of candidates with great facility, through the concentration of their vote upon one man.

Moreover, politicians ought to be prevented, as far as possible, from putting up "straw" or bogus candidates for the diversion of the vote, and only those men who have a *bona fide* intention of running for office should be permitted to have their names printed upon the primary election ballot. The determining principle must be to confine the vote at the primary election to those candidates who possess merit, and who are supported by a sufficient number of the voters to entitle them to a recognition upon the ballot through their anticipated influence in deciding the result at the polls.

These objects can probably best be accomplished by requiring the filing of petitions or nomination papers signed by from two to three per cent. of all the members of the political organization named in the petition and represented in the political division covered by the office for which a nomination is sought. To insure that the signatures may represent the latest possible expression of the wishes of the signers with respect to the candidates, the circulation of nomination papers prior to the publication of the notices of a primary election ought to be forbidden.

In order to prevent "home candidates," or men who have supporters only in a narrow community, from securing the required number of signatures, it is necessary to provide for the proper distribution of the signers over the territory comprising the district. In case of state offices provision might be made that signers of nomination papers ought to reside in at least one-half of the

counties of the State, and in number bear the same ratio to the whole number of signatures required, as the number of votes cast by the party in each county bears to the whole number of votes cast within all the counties in which signatures are solicited.[1]

In case of the district offices the same principle might be applied, except that since we are dealing with much smaller political divisions, embracing but a few, or, at times, but one county, there might result a bunching of signatures without the insertion of a provision that signers must reside in at least one-fourth or one-third of the election precincts in at least one-half of the counties included in the district. For the same reasons, signers of nomination papers for county or city offices ought to be residents in at least one-half of the election precincts within the county or city.

For the purpose of identifying the signers, and for the prevention of fraudulent or indiscriminate signing, there should appear in case of each signature, the name in full, residence, street, and number (if any), profession, and a declaration that the signer intends to support the candidate.

In order that the signatures may faithfully represent the standing of a candidate among the body of *voters* who alone decide his nomination, no person who is disqualified from voting under the laws of the State ought to be permitted to sign. Nor ought any qualified voter to be allowed to sign more than one nomination paper for any given office.

To facilitate matters in the process of identification of signers, and to aid in the detection and investigation of fraudulent signatures, as well as for the convenience of

[1] See p. 232.

those voters who may be called upon to testify to the genuineness of signatures, it is well to keep signatures distinct by precincts in case of nomination papers for all offices.

In order to prevent the future embarrassment of candidates who have filed nomination papers containing illegal signatures, and for their immediate protection, some qualified elector in each community ought to be called upon to affix his affidavit to a group of signatures known to him certifying to its correctness.

Provision might well be made for the filing of nomination papers for non-partisan or independent candidates. The number of signatures required in such cases ought to be greater than in case of regular party nomination papers in order to prevent visionaries, fanatics, and men who have none but upstart ideas to advertise, and no meritorious cause to champion, from securing a place on the primary election ballot, and to discourage independent attempts at nomination when unsupported by worthy and popular principles endorsed by a reasonable proportion of the voting population.

These nomination papers ought to be filed at such a time as to permit of the proper publication of the lists of candidates, and the preparation of sample and official ballots, as well as to enable the public to inform itself respecting the relative merits of the candidates, without dragging out the nominating campaigns to such an extent as to result in a loss of interest. Thirty days would probably be ample for the accomplishment of these purposes.

For the sake of convenience and system the nomination papers pertaining to the county and city officers may

well be filed with the county and city clerks respectively, and all others with the secretary of state. This arrangement necessitates the forwarding of the names of candidates filed with the secretary of state to the various county clerks in whose counties the candidates are to be voted for. Sufficient time must be allowed for the arrangement of the names of candidates filed with the secretary of state, for their transcription, and the duplication of the lists, preparatory to their transmittal to the proper county clerks. About five days would seem to be a reasonable time, so that the county clerks would receive the lists about twenty-five days before the primary election.

Immediately after the receipt of the lists of candidates, the county clerks ought to be required to prepare and publish sample ballots, as well as to advertise the lists from time to time in some newspapers of general circulation.

In case of city primary elections, where the facilities for the familiarization of the voters with the candidates are many, and the area covered by the election is small, it would not be necessary to close the filing of nomination papers until about two weeks before the primary, nor to compel the publication of the lists of candidates earlier than the tenth day preceding primary day.

All necessary ballots, blanks, and other supplies can probably be most conveniently furnished, as in the case of general elections, while the necessary expense involved may be met out of the city, county, or state funds as provided by the general election laws.[1]

[1] See p. 382 on how the expense may be met.

It is desirable to surround the officers who conduct the primary elections with all the powers and all the dignity and influence which is enjoyed by those acting at general elections. This can be accomplished by placing the primaries under the supervision of the same officers who conduct the general elections, and by providing for the choice of all inspectors, ballot clerks, etc., as in the case of general elections.

What is known as the open primary system of voting is suggested as a first choice.[1] Under this system due registration, or qualification to vote under the general election laws, is made the only requirement for participation in the primary. The tickets of all parties, as well as a non-partisan ticket, are securely fastened together[2] and handed to the voter with the right of voting any one of them. If several tickets are marked none is to be counted.[3] But a voter may write the name of any candidate running on some other ticket, or any other person, upon the ticket of his choice, and such vote is to count towards a nomination of the selected person upon the ticket upon which the name is written.[4]

It seems desirable to prevent the use of pasters, by denying the voter the right to paste a slip containing a written or printed name upon the ballot. This privilege is granted under the Oregon and California laws, but is open to serious objections. In New York it was found to be extremely inconvenient and annoying in the

[1] For detailed reasons, see Part III, ch. IX.

[2] Were it not for the unwieldy size of the ballot, and the difficulty of its preparation, it would be desirable to have all tickets on one sheet to avoid possible separations and losses.

[3] This is to discourage even an attempt to have votes counted on several tickets.

[4] This provision, by permitting every voter to cast his ballot for any person of his choice, overcomes the constitutional difficulty of a free exercise of the right of suffrage.

canvass through the pasting together and tearing of ballots, while it also encouraged electioneering by "machine" men who were on hand with neatly printed and easily pasted slips containing the names of their favorites, which they distributed among the voters with great success.

In the arrangement of the printed matter upon the ballots, the following order is suggested: First, the names of the various candidates grouped alphabetically [1] by parties and under the proper offices in the order of their importance, beginning with the highest, or state offices. Next, the delegates to conventions, if any, and the party committeemen.[2] And finally, the propositions of party policy or principle or rules of party organization, if any.

Should it be found desirable to incorporate the closed primary system, then the New York secret enrollment plan as explained in Part II is worthy of further trial.[3] The test oath which may be required in case of a challenge, or preparatory to enrollment, ought not to concern itself with the past affiliations of the voter, nor ought it to bind his future action, but should be confined solely to a declaration of general sympathy with the principles of the party, and of a present intention to support generally the candidates of the party at the ensuing election.[4] It would seem advisable to have the test pre-

[1] The alteration of the names by which every candidate is given the advantage of a first position, is also desirable, but it increases the expense because of the greater amount of work involved in the printing, sorting, etc.

[2] Whether or not the voter ought to be allowed to write the names of the committeemen of his choice in spaces provided for this purpose, or whether such names ought to be formally proposed and printed upon the ballot, is still an open question. The tendency at present is to leave blank spaces.

[3] See p. 112.

[4] See p. 370, also 350.

scribed by the legislature, instead of leaving it to the party authorities.[1]

Each party must necessarily have its own ballot under the closed primary system, and may also be given its own ballot box, thereby facilitating the canvass by removing the necessity of first sorting the ballots by parties, and thus eliminating the possibility of mistakes in the process of assortment. If only one ballot box is used it is desirable to have the various tickets of different colors to aid in their assortment; otherwise the same color, size, and arrangement is suggested.

To repress suspicions of foul play and to insure fairness in the conduct of the primary election, party challengers ought to be permitted to be present at the polls, and to observe the acts of the primary officers, while individual candidates in case of important offices, or specified groups for minor positions, might well be given the right to hire watchers of their own.[2]

The polls ought to be open for a sufficiently long time to enable every class of voter, from the pauper and laborer to the banker and society leader, to cast his ballot without unreasonable inconvenience. In the city, where the working day generally begins at about seven o'clock and ends at six o'clock, the laborer ought to have at least two opportunities for voting, one in the morning and another in the evening; hence, the polls ought to be open from about six o'clock in the morning to nine o'clock in the evening. In the country the most convenient hours frequently are in the morning on the return of the farmer from the creamery, mill, or store, and in the evening after the day's work is done. The

[1] See pp. 343–347.

[2] See p. 173.

tendency has been to make the hours of open polls shorter for the country than for the city, but in view of the longer trips to the polls, and the greater inconvenience incident to voting in rural districts, it seems very desirable to give the farmer the advantage of a long day ranging from about seven o'clock in the morning to nine o'clock in the evening.

Where the open primary system is employed the votes must necessarily be canvassed by representatives of all parties to insure a fair and impartial count. The following canvassing boards are suggested: A county canvassing board composed of the county clerk and the chairman and secretaries of the county committee of each political party within such county. A city canvassing board composed of the city clerk and corresponding party officers within the city. A state canvassing board composed of the secretary of state and the chairman and secretary of the state central committee of each political party. Definite dates must be fixed for the opening and closing of the canvass in order to avoid unreasonable delays.

Where the closed primary system is incorporated in the law each party is enabled to canvass its own vote, since the ballots of the different parties are separate. In this case the ward, city, and county canvassing boards may well be composed of the party chairmen of the election precincts within these political divisions. The state canvassing board may be composed of the party chairmen of each county.

Those persons who receive the largest number of votes are to be the nominees.[1] Tie votes can probably best be

[1] See p. 290, for discussion of majority nominations.

decided by the canvassers by lot. Except in case of local offices, it would be inconvenient and expensive for candidates to meet and decide the tie.

The party platform must faithfully reflect the wishes of the voters, and must be drawn from such a source as to possess a controlling influence over the candidates. The following method for its promulgation is suggested: Apply the referendum principle to its adoption by vesting with the people the power of a veto over the main issues of a platform which is to be drawn by the state central committee of the party, somewhat upon the plan by which propositions of party policy or principle are submitted to a vote at the primary under the Oregon law of the year 1901. In order to further clothe the voter with the consciousness of power, the right of having any particular detail submitted upon petition of a certain number of voters might be incorporated.[1]

Although the direct primary by abolishing the convention will considerably curtail the large powers which are at present exercised by party committees over the organization and conduct of these bodies, and will transfer much of the importance and significance of party activity from the party officers to the party members, there will, nevertheless, devolve upon the party committees a number of important duties which they alone can well execute, and which will invariably have a great influence over the failure or success of the individual party candidates. The party committees will still have to outline the campaigns, hire campaign speakers, arrange their tours in accordance with the particular needs of

[1] See p. 272. The plan of having the platform drawn by the candidates after their nomination, while a most radical departure from the present method, might prove far more successful than its novelty and apparent inconsistency with established customs would suggest. See p. 269.

the various candidates, distribute campaign documents, arrange for meetings, etc. These committees, therefore, will still possess powers of sufficient importance to create the temptation of their arbitrary control by politicians for the promotion of private and personal interests, thereby distorting the proper operation of the direct vote system and thwarting the wishes of the people. For this reason the writer very seriously urges the popularization of that important and indispensable part of our nominating machinery, the party organization, through the selection of the party committeemen by the voters at the primary, rather than by delegates at conventions, or by appointment from some source, in which cases they would be in constant danger of falling a prey to the ever-present influences of corrupt politics.

The process of their selection might be made exceedingly simple. A party committee of three for each election precinct might easily be chosen by permitting every voter to write the names of any three qualified electors residents of the precinct in spaces left on the ticket for that purpose. The three receiving the largest number of votes are to constitute the precinct committee, the one having received the highest vote to be chairman. The party committee of each city, county, and assembly district may be composed of the party chairmen of the precinct committees in each such city, county, or assembly district; the state senatorial district committee, of the party chairmen of the assembly district committees in such senatorial district; the congressional committee, of the party chairmen of the senatorial district committees of the districts wholly or partially in such congressional district; the state central committee, of

the party chairmen of the various county committees of the State. A vacancy in the party precinct committee may be filled by the remaining members of the committee. In this way a complete and popular party organization may be maintained in each State under a direct vote system, through the application of the principle employed in the nomination of public officers to the selection of the officers of the political parties.

REFERENCES.

Books.

BRYCE, JAMES. American Commonwealth. Vol. II. 1889.
CREE, NATHAN. Direct Legislation by the People. 1892.
DALLINGER, FREDERICK W. Nomination to Elective Office. 1897.
HOFER, E. The American Primary System. 1896.
FIELD, DAVID DUDLEY. Some Reprehensible Practices of American Government. New York, 1896.
MCMILLAN, D. C. The Elective Franchise in the United States. 1880.
REMSEN, DANIEL S. Primary Elections. 1894.
REMSEN, DANIEL S. Suffrage and the Ballot. 1892.
ROOSEVELT, THEODORE. Essays on Practical Politics. 1888.
STRICKNEY, ALBERT. A True Republic. 1879.
STRICKNEY, ALBERT. Democratic Government. 1885.
SULLIVAN, J. W. Direct Legislation. 1893.
WIGMORE, J. H. The Australian Ballot System. 1889.

Magazine Articles.

——— Bossism. Outlook, Vol. LV, p. 226 (Jan. 16, 1897).
——— California, Primary in. Nation, Vol. XXXIV, p. 74 (Jan. 26, 1882).
——— Caucus Legislation. New Englander, Vol. LIV, p. 297 (April, 1891).
——— Caucus, Legislation of. Nation, Vol. VIII, p. 86 (Feb. 4, 1869).
——— Caucus and Republican Party. Nation, Vol. VII, p. 4 (July 2, 1868).
——— Caucus Reform. Harvard Monthly, Vol. X, p. 1 (Jan. 27, 1893).

——— Caucus, Substitutes for the (Dana, R. H.). Forum, Vol. II, p. 491 (Jan., 1887).
——— Caucus, Trouble with the. New Englander, Vol. XXXIV, p. 473 (July, 1875).
——— Conference, National, on Primary Elections, Report of. Public Opinion, Vol. XXIV, p. 685 (June 2, 1898).
——— Convention, Nominating. Nation, Vol. VIII, p. 429 (June 3, 1869).
——— Democracy, Perils Inherent in (Lyman Abbott). Outlook, Vol. LXVIII, p. 624 (July 13, 1901).
——— Direct Nominations (Hopkins, J. S.). Arena, Vol. XIX, p. 729 (June, 1898).
——— Direct Primaries. Nation, Vol. LXVI, p. 161 (March 3, 1898).
——— Direct and Indirect Primaries. Outlook, Vol. LXVI, p. 91 (Sept. 8, 1900).
——— Direct Primaries make Headway. Outlook, Vol. LXV, p. 761 (Aug. 4, 1900).
——— Direct Primary Movement. Outlook, Vol. LVI, p. 9 (May 1, 1897).
——— Direct Primaries, Dark Side of. Outlook, Vol. LIX, p. 797 (July 30, 1898).
——— Direct Primaries Demanded. Outlook, Vol. LXVII, p. 477 (March 2, 1901).
——— Direct Primaries and Uniform Accounts. Outlook, Vol. LXVIII, p. 140 (May 18, 1901).
——— Direct Vote at the Primary. Municipal Affairs, Vol. II, p. 176 (1898).
——— Georgia, Direct Primaries in. Outlook, Vol. LIX, p. 411 (June 18, 1898).
——— Illinois Primary Election Law. Outlook, Vol. LVIII, p. 455 (Feb. 19, 1898).
——— Illinois Primary Law. Outlook, Vol. LVIII, p. 753 (March 19, 1898).
——— Kansas and Missouri, Direct Primaries in. Outlook, Vol. LXIII, p. 475 (Oct. 28, 1899).
——— Kentucky, Direct Primaries for New York and Chicago. Outlook, Vol. LVII, p. 790 (Dec. 4, 1897).
——— "Machine," American Domestic Problems (Lyman Abbott). Outlook, Vol. LXVIII, p. 396 (June 15, 1901).
——— "Machine" Candidates. Outlook, Vol. LV, p. 155 (Jan. 9, 1897).
——— "Machine" Power, Growth of. Nation, Vol. LXXI, p. 183 (Sept. 6, 1900).

——— Minnesota, Direct Primary Law of. Outlook, Vol. LXII, p. 150 (May 20, 1899).
——— Minnesota, Direct Primaries in. Outlook, Vol. LXVI, p. 288 (Oct. 6, 1900).
——— Minnesota, Direct Primaries in. Outlook, Vol. LXVII, p. 654 (March 28, 1901).
——— Minnesota, Direct Primaries in. Outlook, Vol. LXVIII, p. 3 (May 4, 1901).
——— Minnesota, Hennepin County Primary Law of. Annals of American Academy, Vol. XVI, p. 490 (Nov., 1900).
——— Minnesota, New Primary Law of (Davis, S. M.). Independent, Vol. LII, p. 2495 (Oct. 18, 1900).
——— National Conference on Primary Elections, Report of. Outlook, Vol. LVIII, p. 266 (Jan. 22, 1898).
——— Nominations by the People (Coler, B. S.). Independent, Vol. LI, p. 3210 (Nov. 30, 1899).
——— Nominating System, Reform of. Penn Monthly, Vol. XII, p. 602 (Aug., 1881).
——— New York, Direct Primaries in, under new law. Outlook, Vol. LIX, p. 412 (June 18, 1898).
——— New York, Hill Bill in. Outlook, Vol. LVIII, p. 210 (Jan. 22, 1898).
——— Nominating Ballot, Brooks Plan. Outlook, Vol. LVII, p. 950 (Dec. 11, 1897).
——— Nomination, Brooks Plan. Nation, Vol. LV, p. 490 (Dec. 23, 1897).
——— North Carolina Direct Primaries. Outlook, Vol. LXVI, p. 192 (Sept. 22, 1900).
——— Ohio, Cleveland, Direct Primaries in. Outlook, Vol. LX, p. 251 (Sept. 24, 1898).
——— Ohio, Direct Primaries in. Outlook, Vol. LXIV, p. 378 (Feb. 17, 1900).
——— Pennsylvania, Direct Primaries in. Outlook, Vol. LXVI, p. 861 (Dec. 8, 1900).
——— Primaries, Concurrent. Outlook, Vol. LXIII, p. 8 (Sept. 21, 1899).
——— Primaries, Public Control of (Whitten, R. H.). Annals of American Academy, Vol. XV, p. 165 (March, 1900).
——— Primary, Legislation Concerning. Annals of American Academy, Vol. XI, p. 381 (May, 1898).
——— Primary Legislation, Tendency in (Branson, W. J.). Annals of American Academy, Vol. XIII, p. 346 (May, 1899).
——— Primary Election Reform. Public Opinion, Vol. XXIII, p. 809 (Dec. 23, 1897).

——— Primary, Reform of the. Gunton Magazine, Vol. XIV, p. 152 (March, 1898).
——— Primary Reform, Futility of. Nation, Vol. LXV, p. 431 (Dec. 2, 1897).
——— Primaries, Reform of Party. Independent, Vol. L, p. 117 (Jan. 27, 1898).
——— Primaries, Regeneration of. Nation, Vol. XXXIII, p. 486 (Dec. 22, 1881).
——— Primary Election System, How to Reform (Insley, E.). Arena, Vol. XVII, p. 1013 (June, 1897).
——— Referendum, Direct Legislation. Outlook, Vol. LX, p. 156 (Sept. 17, 1898).
——— Reform, An Essential. Outlook, Vol. LVIII, p. 261 (Jan. 22, 1898).
——— Reform, A Necessary. Outlook, Vol. LVII, p. 943 (Dec. 11, 1897).
——— South Carolina, Direct Primaries in. Outlook, Vol. LX, p. 105 (Sept. 10, 1898).
——— South Carolina, Direct Primaries in. Outlook, Vol. LX, p. 146 (Sept. 10, 1898).
——— South, Direct Primaries in the. Outlook, Vol. LXII, p. 243 (June 3, 1899).
——— Wisconsin, Conflict in. Outlook, Vol. LIX, p. 1001 (Aug. 27, 1898).
——— Wisconsin, Direct Primaries in. Outlook, Vol. LXV, p. 897 (Aug. 18, 1900).
——— Wisconsin, La Follette's Ringing Message. Outlook, Vol. LXVIII, p. 199 (May 25, 1901).
——— Wisconsin, Lewis Primary Election Law of. Outlook Vol. LV, p. 963 (April 10, 1897).
——— Wisconsin, Proposed Reform in. Outlook, Vol. LIX, p. 759 (July 30, 1898).

Newspapers.

Madison Democrat, 1896–1902.
Milwaukee Free Press, 1901–1902.
Milwaukee Journal, 1896–1902.
Milwaukee Sentinel, 1896–1902.
Minneapolis Journal, 1899–1902.
Minneapolis Tribune, 1899–1902.
St. Paul Pioneer, 1899–1902.
San Francisco Bulletin, 1865–1868.
News and Courier (S. C.), 1885–1902.
Wisconsin State Journal, 1896–1902.

Miscellaneous Sources.

Addresses: Gov. R. M. La Follette, before the University of Chicago, February 22, 1897, and before the University of Michigan, March 12, 1898; also reports of his campaign speeches of 1896, 1898, and 1900.

Addresses before the Wisconsin legislature on the proposed direct primary law of 1901, by H. C. Adams, W. H. Chynoweth, W. D. Corrigan, J. A. Frear, M. G. Jeffris, L. A. Miner, J. G. Monaghan, E. Ray Stevens, H. C. Taylor, J. M. Whitehead.

Correspondence: With leading politicians and important officials and primary reformers in most of the States.

Court decisions: Including opinions of the supreme courts of California, Oregon, Pennsylvania, Colorado, New York and others.

Party rules: Governing the conduct of primary elections in counties of a number of northern and southern States.

Reports of: National Primary Election League, 1898; Municipal Leagues in a number of large cities; Civil Service Reform League pamphlets, and publications of various other reform organizations in the country.

Session laws of the various States as referred to in foot-notes.

PART IV

THE DIRECT PRIMARY IN ITS RELATION TO OTHER REFORMS

CHAPTER I.

OUR CIVIL SERVICE AND ITS REFORM.

However successful the direct primary reform may prove, the evils which infest our political system to-day cannot be entirely eliminated at once. Even though the best of men are nominated and elected, efficiency in administration will nevertheless be marred, because of other defects in our government, and because of the continued subjection of officers to numerous powerful temptations which must inevitably operate as a curse of good government. There will still remain in many cases an immense and growing patronage—the spoils of the victorious party. There will also remain unaffected a large and increasing number of elective offices, mostly of short terms, which will expand the duties of the citizen at the primary election, and will tend to confuse and cloud the voter in his choice of candidates, and weary him with incessant calls to the polls. And finally, there will still exist an opportunity for the corrupt use of money in nominations and elections. Other reforms, the practicability and possibility of which will have been established through primary reform, must be vigorously prosecuted. The civil service rules must be further extended. A redistribution and reduction of elective and of appointive offices must be made. Money must be forced out of politics through the further enactment of corrupt practices acts.

Important among these reforms is that of the civil

service. If carried to a successful consummation, it will be a most valuable aid to primary reform, just as primary reform will pave the way and aid in the reformation of the civil service. Their relation is reciprocal. One is the handmaid of the other.[1] Some writers even claim that the reform of the civil service is of paramount importance; that by applying remedies to the corrupt caucuses and conventions we treat the apparent condition only, and not the causes that have brought them into their present disrepute; that the end sought in political control is, primarily, the distribution of patronage; and that true reform begins with the elimination of the spoils of office from political contest.[2] Does this seem reasonable? Are our modern, powerful, political "machines" organized for the dominant purpose of securing control of the spoils of office? Is the great struggle for political ascendency to-day waged by "machines" with the expenditure of enormous sums of money, amounting to hundreds of thousands of dollars in single States, at times, merely for the sake of obtaining possession of political positions which in their total remuneration are out of all proportion to the heavy expense involved in their procurement? Is not the modern political "machine" organized rather for the upbuilding of special interests, for the promotion of private enterprises, for the advancement of favored corporate businesses? Is not the attainment of these larger prizes, greater rewards, higher returns, the ambition of modern political combinations? Proof of this fact lies bare in all political units, from the town to the Na-

[1] Eaton, Dorman B., Civil Service Reform, Lalor's Cyclopedia of Political Science.

[2] Dana, R. H., Forum, Vol. II, p. 499 (Jan., 1887).

tion. In our cities the representatives of "machines" and of corporate interests intrude themselves into the councils, and lobby for ordinances and franchises granting special privileges. The legislative halls of our Commonwealths are besieged by corporation agents and political boodlers for the purpose of controlling legislation for the upbuilding of special interests—for the defeat of efficient measures aiming at taxation reform, or primary reform. In our national legislature similar political and corporate influences are brought to bear, by use of the power of money, for similar ends. Thousands of dollars are contributed to party campaign funds, or spent in regular legislative lobby, for the defeat or passage of subsidy bills; for the advancement of sugar trust interests, or of steel combines; for the modification of tariff schedules which will increase the profits of great manufactures. How inconsiderable and trifling the spoils of office appear in comparison with these greater gains through politics! These spoils of office are no longer, as in the days of Jackson, the dominating prize. They have become subsidiary, and have been reduced from an end in themselves to a means for the attainment of still greater ends.

This change in the relation of patronage to political control is significant, but, as will be seen, by no means argues against the importance of civil service reform, for the corrupt use of patronage, while vicious in itself, is to-day, as a means for the advancement of special interests, and for the perversion of representative government, productive of far greater wrong than ever in the past. That patronage should to-day be a powerful instrument in the hands of political "machines," is but

natural. The office may mean little or nothing, from a financial point of view, to the "machine" which possesses the power of bestowing it, but it means much to the man upon whom it is bestowed in recognition of loyal support and faithful service. Through the tactful distribution of these rewards, the "machine" is enabled to draw to itself a band of faithful workers whose unscrupulous industry makes its defeat difficult, and enables it to gain the larger prizes at which it aims. However, even a more powerful and immediately effective instrument of evil, than patronage, is money in its various forms, as handled by the briber. It would seem that the corrupt use of money in politics is by far more productive of wrong in government than is the manipulation of the spoils of office.

We must conclude, then, that since the control and disposition of patronage is to-day, generally, but incidental to political control, rather than its sole purpose; and since it does not even appear to be the most important means of political control, the reform of the civil service cannot logically be termed as one of paramount importance. A paramount reform, in general language, may probably be defined as one which strikes at the fundamental political difficulties involved in the enactment and administration of good laws; which is capable of successful prosecution under existing conditions; and which is sufficiently thorough and general in its effect to permit of the institution of related reforms which without it could not be effectively carried forward. These characteristics are not common to the civil service reform. The possibility of its effective prosecution under existing conditions is largely contradicted

by the history of the reform. The reason for this is obvious. The reform must be worked out through the agency of government by means of thorough legislation. Reason tells us that where reform is needed, and admittedly the need is general, government is being abused. It is in the hands of men who find advantage in the use of the spoils of office. It may be directly under the control of a political "machine." Can we expect such an agency to institute a reform which strikes a blow at its own power, the retention of which is its burning purpose? The suggestion is easily made that since office and money are the two sources of life of the demagogue and of the professional politician, it is but necessary to cut off their supply in order to achieve the destruction of these political parasites. This is good advice, but under modern political conditions it is impracticable and incapable of effective application. No legislature dominated by "machine" influences will voluntarily cut off the supply of office through civil service reform legislation, or remove the opportunity of using money in politics through corrupt practices acts. Such action would be political suicide and hence unnatural and not likely to be taken. It is necessary first to reform the agency through which these other reforms may then be instituted. Representative men who will faithfully execute the will of the people in matters of reform must be placed in office. This can be accomplished only by means of the improvement of our nominating system, through the defective workings of which politicians are enabled to control government. While, therefore, the reform of the civil service cannot be considered of primary importance, but rather as auxiliary and supple-

mentary in character, the necessity of its prosecution must not be minimized because political reform is not complete without the elimination of the spoils system.

Before attempting to indicate a line of reform it is well to take a cursory view of the problem itself. The government of this country is a huge undertaking. The task is a mighty one and needs many hands. Some of these hands must direct the policies and shape the destinies of the Nation, while others are mere cogs in the wheels, indispensable in their place, but turning in obedience to commands. The first are political in character, the second ministerial. Both are fought for by the political parties. The first rightly belong to the victor, the second do not.[1]

Our country, like any other free and democratic land, can only be governed by political parties, and whichever party successfully contests for the trust and honor must, by election or appointment, fill with its own representatives those offices which control the policy of which the country has expressed its approval by putting the party into power. These are the legitimate spoils of victory. But the government of the United States, the States, counties, cities, towns, and villages have employes whose duties are merely administrative and ministerial, without any political character or significance. These employes—"in number as the sands of the sea"—constitute what is known as the "Civil Service" of the country. At present their selection for appointment is, in almost all cases, made, not from any test of fitness or ability, determined upon the basis of competitive examination, but solely by personal or political influence, and as a re-

[1] Hoard, G. F., Inaugural Address before American Historical Society, 1896.

ward for personal and partisan services. They hold their offices only during the pleasure of the appointing power, and subject to the liability of political assessment.

The results of this system abound in evil. Eligibility to public office is determined, not by competence, but by political influence. Legislators besiege the departments of government in order to secure appointments to office for their constituents and political dependents, and when there are no vacancies to be filled they create unnecessary offices. The influence of the employes, thus foisted upon the public service by the abuse of patronage, keeps in legislative power those who are not worthy of any public or private trust. The employe acts for individuals, not for the people, or for the sake of good government. Appointment to, as well as continuance in, and promotion in, the public service being dependent upon political or personal influence, party service (which commonly means "boss" and "machine" service) takes, in the employe's mind, the place of loyalty to the country, and the faithful performance of public duty. Hence, discipline cannot be maintained in the public service; competent employes who cannot, or will not, do political work, are dismissed. The office-holders become an army of political mercenaries; by their contribution they create a corruption fund; and under the orders of their leaders, they pack nominating conventions, and by force of fraud, control elections.

As a result pure and able men who will not stoop to practice the arts of the politician, and whose service the country cannot afford to lose, find the avenues to public employment closed to them. The maladministration

which follows is charged to the people, and presented as evidence of the inexpediency of democratic rule. Thus, confidence in popular government is destroyed, and faith in the perpetuity of our free institutions diminished. Certainly, here is a problem that is serious. It is a situation worthy of the best thought of the democracy's best brains. Bad government may be improved by removing evils present in our nomination and election machinery, but it cannot be entirely cured without the reform of the civil service. Something has already been done in this direction, but the main task remains undone.

Civil service reform legislation is still in its infancy in most of the States. A national law of considerable thoroughness was, however, enacted in 1883. It empowered the president to appoint, by and with the advice and consent of the Senate, three persons, not more than two of them adherents of the same party, as a commission, with authority to prescribe regulations in pursuance of, and for the execution of the provisions of the civil service act. As a result the "merit system" came into being. Changes were made in the rules drawn by the commission, May 6, 1896, July 27, 1897, and May 27, 1899, so that at present they form a very much improved system.

Among the four States having civil service rules New York ranks first. The original act in this State was passed in 1883,[1] and followed closely the form of the Federal act. It was amended from time to time in various important respects until finally a new act was passed in 1899,[2] codifying and uniting all previous acts and ex-

[1] Session Laws of New York, 1883, ch. 354.
[2] Session Laws of New York, 1899, ch. 370.

tending very considerably the area of their operation. The operation of the new charter for New York city repealed the "Black Act" of 1894 on January 1, 1899, and on July 11 of that year the charter rules were superseded by rules framed in pursuance of the new law. These rules restored all of the essential features of the genuine merit system, and are expected to keep the city service on a fairly competitive basis open to all citizens. Stringent inhibitions upon payment of salaries to persons improperly appointed reinforcing those previously in force, add to the effectiveness of the system. Since the "Black Act" is still in force in the departments and institutions of the State, and the act of 1883 still operates in Buffalo, Rochester, and, in fact, in every other city of the State, except New York, which has its own system, there are at present three different systems of appointment in operation within the bounds of New York State.

In Massachusetts an act was passed in 1884 closely resembling the New York act, and applying to every city in the State. In Illinois the act of 1895 permits all cities to establish the "merit system" by popular vote. In pursuance of the law, rules were adopted by large popular majorities in Chicago and Evanston. A similar act was passed in Wisconsin applying to cities of the first class, and in actual operation therefore only in the city of Milwaukee. In several other States civil service rules are in operation in isolated cities, established by amendments to their charters. In Philadelphia examinations are provided for by the so-called "Bullitt Bill." Persons admitted to competition must, however, be satisfactory to the appointing officer, and the exam-

inations are conducted by boards within the departments, so that in actual operation the system amounts practically to nothing.

San Francisco, California, and Seattle, Washington, have rules applying to all branches of the city service, recently placed in operation as a result of charter amendments adopted by popular vote. Similar rules are in operation as a result of the charter amendments coming from legislative enactments, or from charter commissions in Columbus, Ohio, and New Haven, Connecticut. A set of rules is also provided for by the charter of Indianapolis, but the system in that city was temporarily set aside by the arbitrary action of the mayor in 1896. In Portland, Oregon, and Louisville, Kentucky, there are rules applying to certain departments but not to all.

This appears to be all the civil service reform legislation of which the United States can boast. Much good has already been accomplished, but many more laws are needed. The process of getting them must necessarily be slow. The powers that are affected by the reform are of tremendous strength, and are securely situated. In many cases they control the legislatures, which alone can smite them. Single-handed opposition is as nothing. A few fanatical reformers who stand wringing their hands, and crying out into the world to help make straight the way, cannot accomplish much. It is necessary to arouse a healthy interest in the reform through the education of the masses to actual conditions. This takes time, and is slow, up-hill work, but it is sure, and when once an active and intelligent public opinion has been created, this, if enabled to effectively express itself

through reformed nomination and election machinery, will of itself compel the enactment of the necessary legislation. It is upon this principle that our great civil service reformers, such as Schurz, Jenks, Curtis, and Eaton, are acting. Little can be accomplished without the people. It is necessary to arouse public sentiment in its favor, and to direct it into the legislatures, if reform is to be lasting. Otherwise it cannot but lose itself and discredit its worth through recurring relapses and reactions. Ephemeral reform is neither warm nor cold, and will invariably be repudiated by the people.

The experience of England furnishes an excellent example of how civil service reform must progress. After several ill-fated attempts, reformers in that country became convinced that all expectations of suddenly changing the character and tone of the 60,000 or more persons who made up the civil service of Great Britain—a character and tone which were the growth of generations—were utterly chimerical. It was discovered that any attempt to accomplish at once a full reform, recoiled upon them with disastrous effect.[1] Wise methods, steadily and faithfully applied for the education of the public, at the same time that they closed the fountain of mischief, and not sweeping, revolutionary proceedings which assumed that the moral tone of a Nation's politics could be changed by an assault or an exhortation, were found to be the essential features of reform.

In the United States, it seems that this principle of gradual reform, supported by public opinion, was violated, and this it is claimed has been the cause of a recoil which has for the last few years acted most powerfully

[1] Eaton, Dorman B., Civil Service Reform in England.

against the cause of the reformers. Advantage, it appears, was taken of the Reform Act of 1883, while in 1896, as a result of the power conferred upon the reformers, 30,000 positions were swept into the classified service through legislation. This was done with such disregard of practical considerations that it became necessary to begin to make exceptions almost immediately in order to keep the necessary machinery of the government from being thrown out of gear, because of the number of changes made in positions where men, familiar with the details of the work, were swept out of office by law, only to be superseded by new men unfamiliar with the work of their positions. Too much force also seems to have been used by reformers in attempting legislation. Instead of winning legislators to the cause by first winning over the people, influences were brought to bear to compel legislation. If these facts have been correctly studied and lie at the bottom of the reaction which the civil service reform appears to be suffering at present, then it may be well closely to follow the experiences of England by building the reform slow but sure from the fiber of the people.

Civil service reform also appears to be suffering through the withdrawal of public interest from home affairs, and its concentration upon the glittering charms of an imperial policy. It is argued by some in favor of a policy of expansion on the part of the United States "that increased national responsibility will purify the public service and the morale and wisdom of American administration. In support of this view, the example of Great Britain is appealed to, the purity of its civil service being ascribed to the tonic effect of continuously

expanding responsibility." [1] The fallacy of this argument is shown by Professor Reinsch in discussing the influence of imperialism on home affairs in the United States. "After two hundred years of expansion, and up to the very close of the eighteenth century, English civil service and the general political life of England were as corrupt as ever. The great and lasting reform, on the other hand, was effected only in the era of liberalism, when public interest was concentrated on home questions, and when imperial and colonial interests were in the background." At present we have in the United States "every indication that popular interest is being unduly withdrawn from questions of domestic politics. This indifferent attitude of the popular mind has emboldened professional politicians to seek to strengthen their position by beginning to break down the system of civil service reform."

The force of this contention as far as it bears upon home reform cannot be denied, but as an argument against imperialism it has now become somewhat tardy. We *have* expanded. Through the inevitable flow of events the United States has taken a step which cannot be retraced. The Philippines and other islands are now in our possession to be kept as a sacred trust to humanity, and to be molded for the betterment of life and for the advancement of world civilization. Imperialism is no longer a "question," a consideration of future policy. It would seem, then, that our home reforms have suddenly been thrust upon the brink of a serious and unavoidable danger. However, it is not well to grow pessimistic. While the present policy of imperialism may

[1] Professor Paul S. Reinsch in "World Politics," p. 349.

temporarily check reform at home, such is the history of American life, and such the make-up of the American citizen, that with the growing duties and burdens of their country, and with a continued and rapid spread of education, the "new light" will widen the horizon of the American people, and will continue this Nation in its career of prosperity and progress through the patient and wise acceptance and performance of the "white man's duties" both at home and abroad.

The principles upon which civil service reform legislation ought to be based, may be briefly restated from the English laws, and are as follows:

All non-political offices in the public service must be filled only by selection from among those graded highest after open competitive examinations, conducted upon a uniform system, and under the supervision of officers not subject to partisan influences.

Original entry in the public service shall be at the lowest grade.

A period of probation must precede absolute appointment.

Tenure of office is to be determined by good behavior.

Promotion must be from the lower to the higher grades, on the basis of merit and competition.

No public employe shall be compelled to contribute to any political fund, or to render any political service.

No public employe shall be permitted to use his official authority to influence or coerce the political action of any person or body.

Legislation embodying these principles would strike at the heart of the difficulty, and there is no reason why the result should not be as gratifying as it was in

England. Of the two staffs of life of the politician, office and money, the supply of the first would be entirely cut off, while that of the second would be reduced. However, the absence of offices would make the need for money even more urgent than at present. It is of still greater importance, therefore, to stop the supply of money. How this may be accomplished can also be learned from English experience. The passage of the Sir Henry James Act in 1883 completely rescued that country from the excessive use of money from which it had been suffering. This act, and the civil service reform laws together, have raised the English public service to a standard unapproached by any other nation, save probably Germany, and no good reason appears why the same cannot be accomplished in the United States.

The reform which aims at the exclusion of money from nominations and elections through the enactment of corrupt practices legislation, will be shortly touched upon, after having first briefly reviewed another change in our methods in politics which the reform of our civil service will greatly encourage, and which is already being instituted, though under disadvantages,—namely, the reduction in number of elective offices together with an increase in their length of terms.

REFERENCES.[1]

ATKINSON, HOFFMAN. Civil Service by Special Training. Forum, Vol. XXVIII, p. 293 (November, 1899).

CURTIS, GEORGE WILLIAM. Papers and Addresses on Civil Service. 1882–92.

[1] The literature upon this subject is very copious. Only a few of the more important references are here given.

EATON, DORMAN B. The Civil Service in Great Britain. A History of Abuses and Reforms and their Bearing upon American Politics. 1877.

EATON, DORMAN B. A New Phase of Reform Movement. North American Review, p. 546 (May, 1881).

FORD, H. J. Political Evolution and Civil Service Reform. Annals of the American Academy of Political Science, p. 145 (March, 1900).

GODKIN, E. L. A Chapter in the History of Civil Service Reform Nation, Vol. II, p. 412 (June 15, 1871).

GODKIN, E. L. Public Opinion and the Civil Service. Forum, Vol. VIII, p. 237 (November, 1889).

HART, ALBERT BUSHNELL. Do the People Wish Reform? Forum, Vol. IX, p. 47 (March, 1890).

JENCKES, T. A. Civil Service in the United States.

JOHNSON, JOSEPH F. Is Civil Service Reform in Peril? North American Review, Vol. CLXIX, p. 678 (November, 1899).

NELSON, H. L. Purpose of Civil Service Reform. Forum, Vol. XXX, p. 608 (December, 1900).

ROOSEVELT, THEODORE. The Merit System versus the Patronage System. Century, p. 628 (February, 1890).

SALMON, LUCY M. History of the Appointing Power of the President. 1866.

UNDERWOOD, OSCAR W. The Corrupting Power of Public Patronage. Forum, Vol. XXXI, p. 557 (July, 1901).

WHITE, ANDREW D. Do the Spoils Belong to the Victor? North American Review, Vol. CXXXIV, p. 111 (February, 1882).

Annual Publications of the National Civil Service Reform League.

Proceedings of the Annual Meetings of the National Municipal League.

The Civil Service Record.

The Civil Service Chronicle.

The Civil Service Reformer.

Good Government.

CHAPTER II.

THE REDUCTION AND REDISTRIBUTION OF ELECTIVE AND APPOINTIVE OFFICES.

The institution of direct primaries, and the extension of the civil service law wherever possible in state governments, would also make way for other readjustments in our political system which would promote the cause of good government. The way would be cleared for a reduction in the number of elective offices, which in turn would promote primary reform by easing the operation of the direct vote system. The possibility of these changes arises from the fact that under civil service rules many offices, now arbitrarily appointive, would be filled through competition, i. e. examination. In this way patronage would be enormously reduced, and no possible danger could result from a slight counteraction by making certain offices appointive which are now elective.

That to-day there are many offices in our government from the smallest to the largest political units, which are filled by election, but which ought to be filled by appointment, can hardly be questioned. The reason for this lies open. As a result of the abuse of the appointing power due to the inauguration of the spoils system, many offices, which otherwise would never have been made elective, were made so. In our local governments the election of such officers as county clerks, constables, registers of deeds, coroners, justices, judges, and sheriffs, whose functions are in no sense representative, and

who were appointed until the spoils system had become established, is indefensible upon any sound principles.[1] The voter, alarmed at the abuses of the appointing power, only too readily consented to the change in the hope that it would be an improvement. But it is well to bear in mind that this was a forced change—an expedient resorted to under the stress of pressing emergency, entirely unsupported by any firm theory, or any question of expediency. Some of these offices might probably well be made once more appointive by the governor as they were originally, while the functions of others are of such a nature that where county and city lines are identical, their assumption by the cities is made possible. The touchstone principle, which it is well to bear in mind in connection with this phase of our political system, was tersely put by Chief Justice Ryan when he said, "Where you want skill, you must appoint; where you want representation, elect."

In the city governments the situation is very much the same as in the counties. Just which officers ought to be appointed and which elected depends upon their position in the municipal organization, as well as upon the exact relation in which the city stands to the entire plan of government in the Commonwealth. Since, under American municipal government, the city is an important agent of the general state government, the mayor and council, as standing for representation, should be elected. To this may be added the treasurer, over whom effective control is indispensable, although the same

[1] Eaton, Dorman B., in Lalor's Cyclopedia of Political Science, p. 349. The frequent abuse of the appointing power in case of judicial officers in recent years has challenged the wisdom of an appointive judiciary, so that justices and judges might probably, with reason, be omitted from this list.

could probably be accomplished by a central audit of accounts.[1] In the larger cities of the country the elective principle has already been considerably restricted with good results, and with the purification of our municipal governments this tendency will undoubtedly be greatly strengthened.

The same problem presents itself in the administration of our Commonwealths. Certain elective offices might well be made appointive by the governor, who is in need of greater control over a highly decentralized administration. Accompanying the remarkable development of life in every direction within recent years, there has been a rapid expansion of governmental activity, characterized by the organization of new executive departments in the States. The tendency in their creation has been towards the single-headed system in which the highest office is made elective, and the subordinate positions are filled by the elected head. This has resulted in a scattering of the executive power among numerous individuals, boards, commissioners, and departments of various kinds, each largely independent of the other as well as of the chief executive of the State. Their tenure generally differs from that of the governor; their popular election makes them responsible to the people; their statutory position as creatures of the legislature, from which their powers spring, demands some subservience to that body; their discretionary and sometimes autocratic power, eliminates all feelings of so-called cabinet responsibility. Practically the only forces operating to produce unity and harmony within the system are those which spring from the personal influence of the

[1] Goodnow, "Municipal Problems," p. 188.

governor, and from the application of the theory of party responsibility, under which the dominant party holds its public servants accountable for their acts, and through which it becomes the common aim of the officers entrusted with the administration of affairs to maintain their party in power by popular government.

Since the governor's appointing power is generally limited to a few constitutional and statutory positions, and those of a more or less private character in his own office, while his power of removal is often even more restricted, his position is largely governmental or political in character, and lacks the proper dignity and importance which ought to surround the chair of the chief executive of an American Commonwealth. In some cases, it is true, the heads of departments are appointed by the governor. But there is frequently no system or principle applied to determine which department may most wisely be placed under popular control through election, and which may best be centralized under the administrative head. In Wisconsin, for example, the Commissioner of Labor and Statistics, the Board of Control, and the Dairy and Food Commissioner are appointed by the governor, while the Insurance Commissioner and the Railroad Commissioner are elected. Certainly positions like the latter require as much technical knowledge and special ability for their proper execution as do the former. The problem of getting the right man in the right place is equally important in both cases. The people are no more able to judge of the proper qualifications of an Insurance Commissioner, than they are of a Commissioner of Labor and Statistics. No reasons appear why a distinction should be made between elec-

tion and appointment in case of these offices. The cause of good government is by no means aided through the popularization of offices without principle and aim. Reason and duty would seem to call for a sacrifice of popular control and political preferment to efficiency; and for the establishment of our commonwealth administration upon a more centralized basis, by conferring upon the governor the power of appointment of the heads of departments, and of such subordinates as will insure the sympathetic cooperation of all the executive officers of the State for the common purpose of good government. It will be recalled that the principle of appointment, as here advocated, is in practical operation in the executive department of the Federal government, where it has proved one of the greatest sources of strength and efficiency in our national administration.

Nor will the strengthening of the executive necessarily tend to the outcropping of autocratic or despotic methods. His election at a direct primary will stamp him as distinctly the representative and mouthpiece of the people, in whose trust he acts, and to whom he will be directly responsible. The element of personal allegiance or of affiliation with a political combination cannot, under any conceivable circumstances, become as prominent as it is now. The man at the helm will not have had the helm brought to him, but he will have been brought to it. He will not be forced to choose his helpmates with reference to the wishes of a "machine" or a "boss" through whose influence he has obtained his position, but will be free to pick out his men solely upon the ground of competency, so that credit may redound to him and to his co-workers for work well done. There

would be harmony of action because the subordinates would be the choice of the head. There would be sufficient control, because their tenure would endure on good behavior.

It would seem, therefore, that the centralization of executive power in the States through the judicious expansion of the governor's limited appointing power, could in no wise be fraught with evil.[1] It would introduce unity into a sadly decentralized system, and at the same time would greatly relieve the undue burden which at present rests upon the voter. Through the reduction of the number of state elective offices, together with a similar change in the localities, the progress of the direct primary would be considerably stimulated, for the necessity of frequent calls to the polls, and the perplexity of coming to a decision as to the relative merits of a large number of candidates for office, confuses and disgusts the voter in much the same degree that it makes the business of caucus management intricate, exacting, and profitable to the manipulator.

Of the same nature as the spirit which asks for a reduction in the number of elective offices, is that which demands an increase in their length of terms. It seems that any one who will thoughtfully study the terms of office of our public servants in the different political units, cannot help but be struck by their short duration. In the localities, as well as in the central governments, extremely rapid changes in the personnel occur. Annual elections are common. In our Commonwealths, annual or biennial elections are frequently made to positions

[1] Bradford, "The Lesson of Popular Government," Vol. II, ch. 32: "The Executive in the State."

which no man of ordinary capacity can possibly learn to fill with credit in so brief a space of time.

A good illustration of the brevity of the terms of elective positions may be gathered from the State offices. In two States, Massachusetts and Rhode Island, new elections are made every year. All, or most, officers hold for but two years in Alabama, Georgia, Idaho, Iowa, Kansas, Maine, Michigan, Minnesota, Nebraska, New York, North Dakota, Ohio, South Carolina, South Dakota, Texas, Vermont, and Wisconsin. In the remaining States and Territories, including California, Delaware, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, North Carolina, Oregon, Pennsylvania, Utah, Washington, West Virginia, Wyoming, Oklahoma, and Hawaii, all or most offices are held for four years. In the local governments the shortness of terms is even much more pronounced. The voter is kept busy attending numerous caucuses for the nomination of local officers or for the selection of delegates to lower conventions. He is wearied with incessant calls to the polls, which each succeeding year repeats, and is confused and perplexed with the ever-lengthening lists of candidates between whose merits he must decide, and to whom he must confide the trust of public office.

Like the change from appointment to election, short terms are the result of a reaction of democratic feeling against the abuse of the trust of public office by constant recourse to the spoils theory. It is the result of a feverish anxiety on the part of the people to maintain an immediate and most stringent control over the officers of the government. Experience made this a necessity,

because of the impossibility which existed, at times, through the interference of politicians, for the voters to elect the men of their choice to office. But after the successful consummation of the primary reform, and of the civil service reform, this difficulty would no longer be felt, and short terms in elective offices would, with a few exceptions, be entirely without defense. It is not enough to elect good men to the public service. They must be permitted a tenure of office of sufficient length to enable them to become thoroughly familiar with their duties, and to learn to utilize their abilities to their fullest extent. Government is no exception to the rule that we learn to do by doing, and that we grow towards perfection by practice.

There is at present a tendency towards longer tenures in elective offices. Discussions are being engaged in respecting the advisability of lengthing the term of office of the president, the governor, and other state and local officers. In some States positive results have already been attained. Typical of the movement was the action of the legislature of Wisconsin, which on May 15, 1901, passed an act providing that in all cities of the second, third, and fourth class the terms of all elective offices, except for aldermen in cities governed by special charter, are to be at least two years. The original bill provided for a complete scheme of biennial elections for all cities of the State, but opposition proved too strong for its passage.[1]

An increase in the length of terms in elective offices,

[1] Two other bills were introduced into the legislature of Wisconsin in 1901, having in view the same purpose. One would have made the terms of all elective offices within the state biennial, while the other provided for two-year terms for boards of supervisors and justices of the peace.

besides easing the operation of our nominating machinery, and relieving the duties of the voter at the polls, would place an additional premium upon office. It would give the office-holder an opportunity to inaugurate his favorite policies, and to give his ideas a fair test. It would tend to greater soundness and independence of judgment on part of officials. If they felt sure of their ground, it would often enable them to defy a temporary opposition of public sentiment, only to win their point later when results came in crowned with success. A fair test of an official's capacity would be made, and the possibility of re-election increased. All this would insure greater efficiency in administration, and would inspire an ever-growing confidence in the success of democratic government.

REFERENCES.

BRADFORD, GAMALIEL. The Lesson of Popular Government, Vol. II, ch. XXIII. 1899.

BRIDGMAN, RAYMOND S. Biennial Elections. New England Magazine (N. S.), Vol. VIII, p. 206 (April, 1893).

BRYCE, JAMES. American Commonwealth, Vol. II, ch. LI. 1889.

DEVLIN, THOMAS C. Municipal Reform in the United States. 1896.

GOODNOW, FRANK. Comparative Administrative Law, Vol. I, Book III, ch. III. 1893.

GOODNOW, FRANK. Municipal Problems, chs. I and VII. 1897.

SCHOULER, JAMES. Constitutional Studies, Part III, chs. V, VI, and VII. 1897.

WILCOX, DELOS F. The Study of City Government, ch. IV. 1897.

WOODRUFF, CLINTON ROGERS. Multiplicity of Municipal Elections and Offices. Municipality, May, 1901.

Editorial, Biennial Terms for Elective City Offices. Municipality, June, 1901.

——— Municipal Reform. Municipal Affairs, Vol. II, p. 135. 1898.

CHAPTER III.

THE PREVENTION OF POLITICAL CORRUPTION.

Closely related to the Australian ballot and the primary election reforms safeguarding our nominations and elections, is that which aims to punish the corrupt use of money and other forms of bribery in securing either nominations or elections to office. These reforms are all complementary. Neither one is complete in itself, and all co-operate for a common end,—the establishment of more perfect institutions for the selection of our public service. By penalizing the use of money for the purchase or influence of votes, it is hoped to prevent mercenaries from controlling nominations and elections, and to enable merit instead of money to decide the issue at the polls.

What can be done through the enactment of thorough corrupt practices legislation was well illustrated in England through the enactment of the Sir Henry James Act of 1883, "which from the moment of its application abolished corruption and bribery at a single blow." [1] "Canada, in chapters 8, 9, and 10 of her Revised Statutes of 1886, has admirably followed the English precedent and with excellent results." In our own country, while encouraging progress has been made, much more remains to be done. In 1895 Professor Gregory, in an

[1] For a most able discussion of this subject, see "Political Corruption and English and American Laws for its Prevention," by Charles Noble Gregory, A. M., LL. D., in Transactions of the Wisconsin Academy of Sciences, Arts, and Letters, Vol. X

able treatise on the subject, wrote as follows respecting our corrupt practices acts: "The several States of our own country have for many years had upon their statute books formal and useless enactments against bribery in elections. They simply denounce a penalty against the offense, but make scant provision for their own enforcement, and call for no publicity in election expenditures and for no reports from candidates or committees. They have proved about as efficient as the moral sentiments in a copy book or a worsted motto on the wall."

The first corrupt practices act seems to have been passed in New York in 1890. More serious and successful attempts in the same direction were made the next year in Colorado and Michigan. In 1892 the New York law was changed, while an act was also placed upon the statute books of Massachusetts which was said to surpass all of its predecessors in efficiency and completeness, while the New York law, as it then stood, seems to have been the weakest.[1] In 1893 a gratifying advance was made in Delaware, Kansas, California, and Missouri. So thorough and complete were the California and Missouri acts,[2] that Professor Gregory speaks of them as approaching or even surpassing the Sir Henry James Act in comprehensiveness and efficiency. After 1893 the following States enacted or amended corrupt practices legislation, ranging from the most complete type to that which is the very embodiment of imperfection: In 1894, New York, Massachusetts, and Georgia; in 1895, Arizona, Montana, Minnesota, Connecticut, New York, Iowa, and Pennsylvania; in 1896, Utah,

[1] James, Henry, "British Corrupt Practices Acts," Forum, April, 1893.

[2] The Missouri law was the result of thorough, systematic, but temperate agitation during the year 1892 and prior to the campaign.

Ohio, New Jersey, New York, and South Carolina; in 1897, Wisconsin, Nevada, North Carolina, Tennessee, California, Missouri, Nebraska, and Colorado; in 1898, Florida; in 1899, California, Nebraska and Nevada; in 1900, Kentucky, Maryland, New York, Massachusetts, and Ohio.[1] In some thirteen of these States the acts possess considerable thoroughness.[2] The Minnesota law closely follows the provisions contained in the most excellent Missouri law of 1893. The criticism passed respecting corrupt practices legislation in the United States in 1895 applies with equal point at the present time outside of those States which were enumerated as possessing general, detailed laws. None probably excels the Missouri law of 1893, which "is a model from which all reform legislators must start when they deal with these questions."

The enactment of these corrupt practices acts was not secured without struggles. Our state records are full of instances where good bills were repeatedly defeated by successive legislatures. But continued and systematic agitation won in the end, as it always must when supported by principles of merit which appeal to the common sense of justice and worth. With the success of the past to spur on reform legislators in this field, and with a growing interest in all true reform among the masses of the people, we may with good reason look forward to the early enactment of efficient and comprehensive corrupt practices acts in all of those Commonwealths which have not already availed themselves of the beneficial operation of such laws. Such a movement would

[1] The results of the last year's legislation were not ascertained.

[2] Michigan, Colorado, Massachusetts, Kansas, California, Missouri, Arizona, Montana, Connecticut, Minnesota, Wisconsin, Nebraska, and New York.

greatly strengthen the cause of good government, and would considerably aid the progress of the purification of the primary, thereby hastening the day when with restored power in their hands the people shall vindicate themselves, and shall further prove their capacity successfully to maintain republican institutions.

REFERENCES.

BISHOP, J. B. Political Corruption. The Price of Peace. Century, Vol. 26, p. 667 (September, 1894).

BISHOP, J. B. Insufficient Restriction of Campaign Expenditures. Forum, Vol. 15, p. 148 (April, 1893).

BONAPARTE, CHARLES J. Political Corruption in Maryland. Forum, Vol. XIII, p. 1 (March, 1892).

BURTON, S. C. The Corrupt Practices Bill of 1881. Contemporary Review, Vol. 39, p. 758 (May, 1881).

GEORGE, HENRY. Money in Elections. North American Review, Vol. 136, p. 201 (March, 1883).

GODKIN, E. L. Money in Elections. Nation, Vol. 55, p. 274 (October, 1892).

GREGORY, CHARLES NOBLE. Political Corruption and English and American Laws for its Prevention. In Transactions of the Wisconsin Academy of Sciences, Arts, and Letters, Vol. X. 1895.

GREGORY, CHARLES NOBLE. The Corrupt Use of Money in Politics and Laws for its Prevention. 1893.

JAMES, HENRY. British Corrupt Practices Acts. Forum, Vol. 15, p. 129 (April, 1893).

QUINCEY, JOHN. The Massachusetts Corrupt Practices Acts. Forum, Vol. 15, p. 142 (March, 1893).

RICE, A. T. Political Corruption, the Reform of the Present. North American Review, Vol. 148, p. 82 (January, 1889).

WELSH, H. J. Publicity as a Cure for Political Corruption. Forum, Vol. 14, p. 26 (September, 1892).

WHITE, H. Money in Elections. Nation, Vol. 39, p. 303 (October 9, 1884).

Editorial, Federal Corrupt Practices Act. Nation, Vol. 70, p. 84 (March, 1900).

CHAPTER IV.

THE POPULAR ELECTION OF UNITED STATES SENATORS.

In gathering together the stronger forces of reform operating in the field of politics at the present time, it is necessary to take into consideration that other popular movement of great significance,—the election of United States senators by the people. It is believed by some political thinkers that the application of the principle of a direct vote to the nomination of members of the House of Representatives would ultimately also lead to the popular election of United States senators, thereby removing a fruitful source of corruption and dissension in our state legislatures. It is also believed by many, it appears, that this change would not occur without the institution of a direct vote system. "Until the people adopt the method of the direct nomination of representatives, there will never be an election of a United States senator by the people. Once let them have the permission of the politician to nominate their own representatives, and they will elect men in touch with them, who will cause to be submitted to their constituents for adoption a constitutional amendment, authorizing the election of United States senators by the people." [1]

In the southern States sentiment seems to be drifting towards the informal nomination of United States sen-

[1] John S. Hopkins in Arena, Vol. 19, p. 737 (June, 1898). As will be seen presently, the House of Representatives is not the most serious obstacle in the way of such a change.

ators at the primaries. A large state convention which met in Virginia several years ago demanded that the Democratic candidate for United States senator should be nominated by the "disinterested voters at the primaries, instead of by the politicians of the legislature," while during the last year their nomination at the primaries together with other officers, was demanded in the state platform, and the party committee directed to draw up a scheme for their choice by direct vote. In Mississippi some thirty-eight counties ordered the primaries to give instructions in regard to United States senatorships.[1] In Arkansas nominations to the senate have been made at primaries since the enactment of the primary election law of 1895. The same system was also adopted in North Carolina at the primary elections held in the fall of 1900, and was incorporated in the original direct primary bill of Oregon for 1901. Undoubtedly, such an expression of popular opinion respecting a candidate, while but indirectly brought to bear upon the legislatures, must operate as a most powerful influence in preventing politicians from dominating these bodies in the election of United States senators.

The idea of the popular election of United States senators has been much commented upon of late, and is being received with considerable favor. There is no good reason for believing that such an arrangement would not be more successful than the present one, considering the conditions which obtain in the election by our legislatures, yet it is to be doubted whether direct primaries will aid in bringing about this change. Rather does it seem that they would remove the necessity of a change.

[1] Progress of Direct Primaries in the South, Outlook, June 3, 1899, p. 243.

The popular election of senators is urged to-day because "machine-controlled" or corrupted legislatures frequently send men to Washington who are incompetent, unscrupulous, and entirely unworthy of a seat in the national senate. Who were the senatorial products of New York when the Platt and Hill "machines" controlled the legislatures of that State? Who represented Pennsylvania in the United States senate when Cameron was the idol of the politicians, or when the Quay "machine" dominated Pennsylvania politics? The senate is truly the quintessence of the state legislatures. When the latter are corrupt, the former cannot be pure. Cleanse the one, and you cleanse the other. Improve the state legislatures by dislodging "machine" politicians, and you improve the character of the senators who are chosen by these legislatures. A direct vote system, by making each legislator directly responsible to his constituents, would undoubtedly do away with many of the disgraceful senatorial election scandals, and would remove the source of the many tales of corruption which now issue from our legislative halls, so that there would no longer be the demand for a popularization of our senatorial elections.

Moreover, in order to secure the election of United States senators by a popular vote, it would also be necessary to amend the Constitution. At present such a change would be a very remote possibility, since it could not be accomplished without the acceptance of the amendment by the senate itself, as well as by three-fourths of the state legislatures.[1] The other alternative

[1] Bradford, Lesson of Popular Government, Vol. II, p. 44. In May, 1898, the House of Representatives passed by a vote of 184 to 11 an amendment to the Constitution to this effect, but the senate paid no attention whatever to it.

of a constitutional convention which would place at risk every precept upon which the Constitution is based, is not to be contemplated without a shudder. It is not at all certain that such a change is desirable, and that it might not be fraught with unforeseen disaster. Far better would it probably be for us to purify our legislatures, and then proceed under our Constitution as it stands to-day.

REFERENCES.

CLARK, WALTER. Popular Election of United States Senators. Arena, Vol. X, p. 453 (September, 1894).

EDMUNDS, G. F. Popular Election of United States Senators. Forum, Vol. XVIII, p. 270 (November, 1894).

FLAGG, JOHN H. Popular Election of United States Senators. New England Magazine, N. S., Vol. XIV, p. 190 (April, 1896).

GARRISON, W. P. Popular Election of United States Senators. Nation, Vol. LIV, p. 44 (January 22, 1892).

HAYNES, JOHN. Popular Election of United States Senators. Johns Hopkins University Studies, Vol. II, p. 547 (November, 1893).

MITCHELL, J. H. Popular Election of United States Senators. Arena, Vol. X, p. 453 (September, 1894).

Editorial, Money and Senatorships. Nation, Vol. LXX, p. 295 (April, 1900).

——— Senatorial Elections. Public Opinion, Vol. XXIX, p. 516, (April'26, 1900).

——— Senators and Appointments. Public Opinion, Vol. XXIX, p. 776 (June 21, 1900).

CHAPTER V.

THE REFERENDUM IN AMERICA.

It is proposed briefly to point out the relation existing between the movement towards direct legislation and that having in view direct primaries. It is necessary at the outset to define the terms, "direct legislation," "initiative," and "referendum," which are of fundamental importance in this discussion. Under the "initiative," one or more citizens have the right to originate bills, which, upon submission to the popular vote by petition of a certain percentage of the voters, become laws, if supported by a majority of the whole number of votes cast. By the "referendum" is meant the right of the people to vote upon a law proposed through the initiative, or by a law-making body, and submitted to them by petition of a percentage of voters. The expression "direct legislation" includes both the initiative and the referendum, and may hence be defined in general terms as law-making by the voters, although in effect it operates as a check or veto upon legislation.

The close relation which exists between the principle of the direct primary and that of direct legislation is apparent. They spring from a common source, and their operation takes government back towards a pure democracy. Both reforms find their origin in a common cause—dissatisfaction with government. Both are inspired by faith in the judgment of the plain citizen. Both propose one remedy—the restoration of lost power

to the people. But they hope to accomplish this by different methods. The central idea of primary reform is that good government depends upon good officers, who will not only make good laws but will faithfully execute them, while the idea of the initiative and referendum is that good government depends upon good laws. But good legislation is not sufficient; there still remains its proper interpretation and its faithful administration. We need not only good laws, but also good men to execute these laws. One branch of government would be cleansed by the application of the principle of direct legislation, but the purification of the other departments does not necessarily follow. Though this difference in the scope and effect of these two reforms exists, both concern themselves with the improvement of government through the restoration of its democratic character, so that the progress of direct primaries would influence that of direct legislation, and *vice versa,* the adoption of one rendering the other in large measure unnecessary.

The principle of the referendum has already attained considerable prominence in this country, and is fast being given a wider application. Hence, a brief review of the present status of direct legislation, and an estimation of its future, is not only germane to the subject of primary reform, but is indispensable in drawing a complete picture of the main forces of reform operating in the field of politics.

The idea of direct legislation long ago found fruitful soil in this country, and has since been growing steadily. The referendum is at present in general use, and is likely soon to be even more widely employed, particularly in

the western States where changes are easily and rapidly effected.[1] In South Dakota, it was adopted some time ago through a constitutional amendment, and similar changes are pending in Oregon, Utah, and other western States. The principle has already been introduced into our state governments through the Constitutions. In fifteen States, the location of the capital cannot be changed by act of the legislature, but must go to the people directly. In eleven States, no debts can be incurred, except such as are provided for specifically in the several Constitutions; in many States "no rate of assessment exceeding a figure proportionate to the aggregate valuation of the taxable property" can be imposed without the consent of the people by direct vote.[2] We have the principle of the referendum in the submission of Constitutions and constitutional amendments to the people.

In our localities, subjects of the greatest variety are submitted to a popular vote in cities, counties, towns, and other local districts. There is not a State in the Union in which the legislature does not submit questions pertaining to local government to the people. City charters, local government acts, and bills affecting the form and character of the local governments; loan bills, financial proposals, taxation measures; prohibition, higher license, enclosing of domestic animals,—these are generally the subjects of local referenda.[3]

[1] Oberholtzer, E. P., Direct Legislation, Arena, November, 1900, p. 493.

[2] Brown, A. A., Direct Legislation, Arena, July, 1899, p. 97.

[3] Direct legislation has been adopted into municipal charters in a complete form in San Francisco, Vallejo, and Seattle, and in partial form in many other cities, but particularly in St. Paul, Detroit, and Nashville, where no municipal franchises can be given away by the common council without a vote by the people. In Massachusetts the liquor question is also yearly submitted to a popular vote in the cities.

Of late, the movement towards an extension of the referendum has been rapidly strengthening. More than three thousand newspapers and magazines are advocating it as a reform of primary importance. In 1899 thirty-eight state platforms contained planks favoring direct legislation, while in 1900 the national platforms of the Democratic party, the People's party, the Middle-of-the-Road Populists, and the Social Democratic party embodied initiative and referendum planks. Oberholtzer, one of the most thorough students of this reform, declares that while the general advisability of the referendum is still an "open question," it will undoubtedly soon be even more widely employed in this country.

In view of these facts, it will be of interest, as well as of importance, briefly to view the main advantages and disadvantages of direct legislation. Switzerland has been the Mecca of experience, and there the results were generally favorable. In other countries it has found but a limited application, so that little weight can be placed upon the practical results. In Norway, England, Canada, France, Belgium, Holland, Germany, Austria, Russia,[1] and even Italy and Spain, local referenda are common, and, in some cases, rapidly increasing. In New Zealand there are triennial referenda on the liquor and land tax questions, while an influential and growing party exists in Australia which favors its complete extension to all the affairs of the colony. From this comparatively limited field of experience, the main arguments for and against the referendum are drawn. In the brief summary of both sides of the problem which will

[1] In Russia it is used in the local political units, the *mir* and *artel*, where the people themselves vote on the communal division of the land and taxes.

be presented here, such additional advantages and disadvantages will be included as would probably demonstrate themselves should the referendum be adopted on a more extended scale in this country.

Among the chief advantages of the referendum are the following:

It destroys the power of the legislator to legislate for personal ends, and makes him directly responsible to his constituents.

It deprives corporations, lobbyists, and corrupt politicians of the power to secure the enactment of special laws.

It defeats monopolies, improves the method of taxation, reduces the rate, and avoids national scandals growing out of extravagance.

It arouses a wide interest in matters of public concern, and educates the people upon public questions and in practical politics.

It reduces the tendencies of revolution or radical reform, and prevents sudden explosions of public opinion by permitting the people from time to time to incorporate their ideas of change in legislation.

It strikes a mean in progress between the radical and the conservative. While the people may be impulsive at times, it is claimed that they will be less so than legislative bodies, which every now and then are swept by gusts of passion and folly.

It will give voice and influence to the great mass of home-loving, peaceable, industrious people, who make little agitation, and are not heard in the ordinary clamor of politics, but who are fair-minded and love justice.

It will eliminate all forms of corruption, and do away

with special legislation which to-day is breeding false fortunes for the boodlers, monopolists, and corporation agents.

It will replace party government with government by the people through the destruction of political parties. An active and continuous party organization would be superfluous. Independent judgment would be encouraged, and all waste of time and money incident to the maintenance of a healthy party organization would be obviated.

It will lead to the incorporation in legislation of the idea that only those people who are concerned with and affected by a law shall vote upon it, thereby tending toward a decentralization of power, and the proper redistribution of governmental functions between the town, ward, city, county, State, and Nation.

So much for the advantages of direct legislation, which, it must be admitted, present numerous and encouraging aspects. Against the referendum there are arrayed the following arguments:

It is cumbersome, and requires machinery of the State to be brought into action for purposes for which it is not well adapted.

It is expensive. The outlay, including an immense amount of printing, ballots, voting-booths, pay of judges, inspectors, clerks, and the time spent by voters at numerous elections would be considerable.

In a large and rapidly developing country, such as the United States, with an ever-increasing demand for legislation, it would be necessary to hold numerous elections, or to submit so large a number of bills at one time as to confuse the voter as to their nature and merits, and thus make his judgment worth but little.

It is impossible for the voter to familiarize himself sufficiently with the bills to enable him to pass intelligent judgment, for, as a matter of fact, many able and diligent legislators whose entire time and energy are spent in studying legislation, frankly declare themselves unfamiliar with many of the bills which annually pass our legislatures.[1]

It is uninteresting on the part of the plain people to study difficult laws. One of the striking results of experience with local referenda in the United States, was the strange apathy and indifference of the people respecting measures even of great importance.[2] It may be said in mitigation of this argument, that the vote of the interested voter who is posted, need never be feared.

The people may be tyrannical. Populous portions of the country may legislate in their own interests to the detriment of sparsely populated sections, particularly in the matter of public improvements. However, since the masses of the people are undoubtedly swayed by the larger ideas of justice, and since through the decentralization of power there would result a proper redistribution of local governmental functions, this difficulty would ultimately solve itself.[3]

Important or specially interesting bills would tend to overshadow all else at an election, and would make the question of good candidates secondary.

The average voter can pass more intelligently upon the qualifications of legislators than he can upon the

[1] Maxey, Edwin, The Referendum in America, Arena, July, 1900, p. 50.
[2] Oberholtzer, Ellis P., Direct Legislation, Arena, November, 1900, p. 493.
[3] Pomeroy, Eltweed, Direct Legislation, Arena, July, 1899, p. 105.

merits of laws. The masses of the people study biography more carefully than they study political science.[1]

The legislator would tend to become a mere drafting committee of legislation, robbed of most of the independence, importance, and dignity which it now possesses. Good men would be less apt to aspire to a seat in that body.

"The power of the supreme court of the State in controlling legislation would be greatly weakened, for few courts, especially where the judges were elected, would declare a law unconstitutional after it had once received the direct sanction of the people.

"It would cheapen Constitutions; for ordinary legislation having an equal sanction with the Constitution, the tendency would be to consider all laws bearing the seal of the people as constitutional; hence there would be no permanent Constitution at all." [2]

Such an elimination of all distinction between constitutional and ordinary law would probably be fraught with grave consequences. Our constitutional law, with its fundamental, sacred, and enduring properties, would lose its power. The control of the courts over legislation would be removed. "With the destruction of this keystone of our government,—the Constitution,—the checks and balances of our system would crumble, and the spirit of our institutions would be radically changed."

Moreover, the institution of the initiative and referendum would have a most profound effect upon the principle of party government which is at present so thoroughly ingrained in our political system. "Although

[1] Maxey, Edwin, The Referendum in America, Arena, July, 1900, p. 50. [2] Ibid.

parties have never ceased to exist in Switzerland, the government of the Confederation, unlike that of every other democracy, is not in any sense a government by party." [1] There is an entire absence of party machinery, as well as of national leaders, while the tendency has been towards the maintenance of the dominant party in power.

These peculiar conditions of the parties are not entirely, though largely, due to the referendum, under which it was found that the people do not generally vote along party lines. It also reduces the importance of parties by tending to split up political issues; by drawing attention to measures instead of to men; by weakening the motives for a change of party; and by permitting the people to reject laws which are dissatisfactory rather than replace the party in power. Since final judgment as to legislation is always reserved to the people, there is absent the incentive to outcries against the action of legislators. For all these reasons party organizations have largely lost their significance and their importance in Switzerland.

It will be seen, therefore, that when we come to consider the advisability of introducing the referendum into this country, numerous and grave objections present themselves. While results have been generally favorable to Switzerland, that country is no safe criterion by which to judge the referendum in America. The social, industrial, and political conditions are very dissimilar in these two countries. In Switzerland the population is small and almost stationary. Individual records are matters of general knowledge. Men know each

[1] Lowell, A. L., Governments and Parties in Continental Europe, Vol. II, p. 297.

other from boyhood up. Public opinion is strong. Development, already high, proceeds evenly and slowly. In government, there is no separation of powers, but the administrative and judicial departments are subordinate to the legislature, and through the referendum, hence, directly under the control of the people.

All this is the reverse from conditions in the United States. The population consists of rapidly swelling millions, and is spread over a wide extent of territory. It is movable and in a continuous state of fluctuation. Steady streams of immigrants arrive at our shores annually, and flow from State to State. Public opinion is vacillating, and pulses with the localities. Development in every field of activity is phenomenal. Each succeeding sun sets upon astounding changes. Each year revolutionizes conditions. The legislative needs of such a State are endless. Laws cannot wait for the plodding, busy citizen. The legislative business of society is too big to be conducted by the people. "In some Swiss cantons not more than five laws per year are submitted for a vote, while in none does the number average ten. In our own country "they often run up into the hundreds, and fill a volume so large that the voter would hardly have time to read it through if he sacrificed all his leisure for the purpose." [1] An active, representative legislature is indispensable to-day to deal with the enormous mass of legislation which the rapid development of the Nation demands. And such a legislature will be obtained through the further prosecution of other reforms which are already well under way.

Moreover, there is not the same need of a referendum

[1] Lowell, A. L., Governments and Parties in Continental Europe, Vol. II, p. 298.

here that there is in Switzerland. The Swiss have no executive veto, as a rule no judicial process for setting aside unconstitutional laws, and in their cantons only a single legislative chamber. Hence, they are much more exposed to the danger of hasty law-making, and have a greater need of a veto in the hands of the people.

From this nature of the Swiss government, it also follows that the referendum, if instituted in the United States, could not be as complete a reform as it is in Switzerland. There the legislature, and through the referendum, the people, are the supreme body. The proper administration of good legislation can be forced upon the administrative officers, since they are subservient, not to a separate executive, but to the legislature. In the United States, the presence of discord between the executive and legislative departments, neither being subordinate to the other, might practically nullify legislation. It is true, that generally through the principle of party responsibility and party co-operation, harmony between these two departments would probably exist. But it must be remembered that our parties would not occupy the relatively clearly defined and important positions which they do at the present time, so that the theory of party responsibility would be considerably clouded and confusing in its application. The tendency of the people not to vote in strict party lines, which was so strongly emphasized in Switzerland, would blur party distinctions, and would make it extremely difficult to determine what positions the various parties took repecting each particular law, thereby destroying the power of holding the administrative officers accountable upon the basis of party responsibility.

For these many reasons it would therefore seem that while the referendum is already in very common use in the localities, and to some extent also in our state governments, it is not at all probable that it will ever replace our legislatures as it does in Switzerland. It certainly deserves to retain its very important position among our political institutions, and will undoubtedly become of ever-increasing importance, especially in the localities. But in a fast-developing country, where the legal needs of life make an active, progressive legislature indispensable, it must inevitably retain its place as an auxiliary method of legislation, rather than as the supreme source of law itself.

REFERENCES.

BROWN, A. A. Direct Legislation. Arena, Vol. XXII, p. 96 (July, 1899).

COMMONS, JOHN R. Direct Legislation in Switzerland and America. Arena, Vol. XXII, p. 725 (December, 1899).

DEPLOIGE, SIMON. The Referendum in Switzerland. 1899.

LOWELL, A. L. Governments and Parties in Continental Europe, Vol. II, chs. XII and XIII. 1897.

MAXEY, EDWIN. The Referendum in America. Arena, Vol. XXIV, p. 47 (July, 1900).

MCCRACKEN, W. D. Swiss Solution of American Problems. 1894.

OBERHOLTZER, ELLIS P. The Referendum in America. 1898.

OBERHOLTZER, ELLIS P. Direct Legislation in America. Arena, Vol. XXIV, p. 493 (November, 1900).

POMEROY, ELTWEED. Direct Legislation. Arena, Vol. XXII, p. 101 (July, 1899).

POMEROY, ELTWEED. By The People.

SULLIVAN. Direct Legislation. 1893.

CHAPTER VI.

THE PROGRAM OF REFORM.

We may now briefly scan another kindred reform—that of proportional representation. Like the referendum, it has as its objective point the improvement of all the departments of government through the purification of its most important branch—the legislature. It is the inefficiency of the legislature,—the weak point in democratic government,—which is to be overcome. The advocate of proportional representation believes that where all political parties are represented on the basis of their strength; where every form of public opinion and every idea of public policy possesses an equal opportunity with every other, to be made known, and defended, and represented officially in the legislature, that this body will be made so thoroughly representative of all the deeper shades of common thought in society as to solve the difficulty of inefficiency in government.

Typical of the claims that are made for this reform may be taken the statement of one of its most enthusiastic advocates, Professor John R. Commons.[1] "The gerrymander becomes inconceivable, because a vote wherever cast will count. Mathematical justice between political parties is assured. Legislative bodies will be transformed from inefficient and corrupt bands of spoilsmen, into capable, upright, and representative assemblies of law-makers. The power of the 'machine,' the 'boss,'

[1] Proportional Representation Review, September, 1893.

and the lobby would be broken. Bribery would be rendered fruitless, and representative government would become what it has been in name only, free."

Grant that all this would follow, is not the real question at the present moment, how shall we get representation of any kind? The fundamental law of the land gives us a right to representation which we are by no means permitted to enjoy to-day. It would be absurd to try for minority representation when we have not yet succeeded in getting an expression of the will of the majority. "We have a sham representation. It gives a show of fairness, but it is crude and essentially unfair. It does not represent the people. It represents the politician. We are a law-abiding people, yet our laws are made by a minority of the people, and by an irresponsible oligarchy more dangerous than that our fathers revolted against."[1] Now if we have a "sham representation" to-day, where we have a right to true representation, it seems ridiculous to extend the right of "sham representation" to the minorities. If the members of the successful party are not properly represented now, why add to the farce by extending an empty right to the weaker parties? Does this not seem like reform attempted at the wrong end? First let us restore to ourselves the full power of the right to representation which we now possess, but do not enjoy, then it would not only be easy, but effective, if found advisable, to inaugurate a system of proportional representation.

As already suggested, the referendum, as well as proportional representation, incorporate the idea of arriving at a good government by purifying the legislature.

[1] Commons, John R., in Proportional Representation Review, September, 1893.

The real effect of direct legislation is negative. It does not purify, but deprives the legislature of that power of law-making which now makes its corruption and control worth while. He who advocates the referendum in our States thereby declares his belief in the hopeless failure of our legislatures. He has lost his faith even in direct representation, or a single delegation of power, and sees relief only where the voter can with his own hand at the polls express his wishes respecting the laws by which he is to be governed. It seems difficult to reason away the assertion that the efficiency of our legislatures can be restored through the institution of other reforms already discussed. The substitution of the initiative and the referendum would probably involve our government in numerous unforeseen difficulties, as was suggested in the preceding chapter. An active representative legislature is indispensable to-day. It can be restored through the further improvement of our election and nomination machinery; through the extension of corrupt practices legislation; through the institution of civil service reform; and finally, if deemed politic, through proportional representation. For this reason it would seem that the reformatory forces in the field of politics ought to co-operate rather for the restoration of efficiency in our legislatures, than for a redistribution of legislative functions which would rob our lawmakers of their power, and would leave the legislature a secondary and broken institution.

We are now ready to draw some conclusion as to what ought to be the order of reform in our political institutions. True reform in a representative government must follow the natural flow of power. It must begin

at the source, and having insured its purity, it must then guard the onward coursing stream against the ever-threatening presence of corruption. The people, therefore, are the starting point. They having been aroused tangible results may be achieved. Since the power of government streams from the political party, the members must be protected in the selection of their candidates for public office,—our nominating institutions must be reformed. Then follows the contest between the parties which must be won on merit, and fought on fairness,—our election machinery must be still further improved. With the party and its officers once installed in power, the temptation to corruption, abuse, and narrow partisanship, which operates before as well as after election, must be destroyed by the elimination of the spoils of office,—our civil service must be still further reformed. These reforms will yield representative party government, and should it be deemed expedient and wise, the right to representation, which would thereby have acquired meaning and power, might then be extended to minorities through the inauguration of some scheme of proportional representation. And, finally, with the representative theory worked out as far as possible in our legislatures, and in every other department of government, there would remain the necessity of the initiative and the referendum for that class of legislation in which a delegated power of lawmaking is inadequate or fails altogether,—the principle of direct legislation must be judiciously extended.

Here would seem to be a program of reform,—a logical order in which the efforts of reform ought to be concentrated. Not that each must be carried to its perfect

completion before the next is undertaken, but that beginning with the fundamental reform of our nominating institutions, each succeeding reform must, if its fruits are to be enjoyed, be built upon that which precedes it. This fact is eloquently demonstrated by the Australian ballot reform, which, while it has wrought wonderful improvements, but partially yields the benefits that will flow out to the people when once our nominating machinery has been given a successful legal setting. The various reforms are all complementary to each other, and cooperate for a common end. Independent reform, when illogically prosecuted, can accomplish but little, for the progress of one reform vitally affects the progress of every other, and each as fundamental to the next, must be kept in the van; otherwise, the reform agitator but wastes much time and effort, and dulls the people to the merits of his cause by *prima facie* evidence that its weakness denies it a voice in law.

For example, even though we admit that proportional representation and direct legislation, by purifying the legislatures of this country, would remedy the worst of the existing evils in democratic government, there is at present no way in which such reforms can be instituted. They cannot be forced down upon our legislators and upon the people by some power from above, because there exists no such power. They can be introduced only by influences radiating into our legislative halls from the masses, and through our nomination and election machinery. But even though the people are with the reform, we know that to-day they repeatedly find themselves powerless even though willing to act. Their voice has been monopolized by "machine" politicians. Their own

government is deaf to their demands. Can we gainsay this? Review the field of politics. Note the forces of reform. See their expression in thousands of newspapers and magazines. Hear their voice in thousands of mouths from platform and pulpit. Listen to the assenting cheers of assemblages. From all over the land come the confirming murmurs of the multitudes. Are the people for reform? Do the people want good government? Who can doubt it?

Now turn to our legislative halls. What are the tangible results of years of agitation? What has been accomplished in the ranks of our civil service? For decades, earnest and powerful, there has risen the cry against the spoils system,—the reward, a few reform acts.[1] For years have men fought against the purchase of votes,—the result, successful corrupt practices laws in but few States. Young, but overwhelming, is the movement for better primaries, but the laws are being defeated, although success is greater here than elsewhere. What is the significance of all this? Does it not prove that our legislatures are out of harmony with the people? What must be done, therefore, is the prosecution of a fundamental reform. What is of paramount importance is the improvement of our nominating and election institutions. We must restore to government the voice of the people by going back to its source—the primary. There lies the well of power. There opens up the doorway to all reform.

The prospects of the direct primary are bright. Its friends, though new, are staunch, and grow in rapid numbers. The first important step which is now being

[1] Our national government rests upon a fairly good basis.

taken, is always the hardest. Defeat mars most the dawnings of success. In the progress of primary reform we find the strength of ultimate victory. The power to do rests with the American people. It is found in their past and their present. As we look abroad in our land and see the marvels that recent years have wrought, we are inspired to say with one of the greatest spirits of primary reform, "Strengthen thine heart and be of good cheer." The possibilities of the future seem infinite. The wheels of progress are advancing a young and sturdy nation as they are no other. The expectations of our fathers have long been left behind, and the dreams of youth are already ours. Prosperity is written everywhere. The Nation is glad in the plenty of its fields, and mines, and factories. Life is strong, busy, and fruitful. Men are content, confident, and hopeful. All are ready to do for their countrymen as for their homes. The daily way is spirited with a firm good cheer that inspires the many with boundless faith in their power to act and to overcome.

With modest enthusiasm we greet our growing success, and cherish an honest pride in our joy. What we have and what we are rests upon what we have done. It springs from the industry and skill of our laboring men, our capitalists, our educators, our politicians, and our legislators. Success has come not because there were no difficulties, but in spite of them. As problem after problem has arisen, it has been grappled with and solved. The Nation has held its own. Thus to-day, we may well feel confident of the future though the burden grows greater as we grow stronger. The cries of ruin and perdition which rise from despondent lips, receive but a

passing, sympathizing ear, for the heart beats that all will go well. We meet the dangers that beset us firm in the power of avoiding their clutch.

It is in this hopeful spirit that the writer has endeavored to deal with the difficulties which exist in politics to-day. Not, however, with an optimistic eye blinded to fact, but with an observing, reckoning spirit, which, though it discovers much that is evil, sees much more good than is needed for its correction. When men predict the end of democratic government in an approaching despotism of one-man-power, we pray them to consider. That our political institutions are not what they ought to be is plain. That they are not hopelessly perverted is equally plain. Where we profess democracy and have it not, democracy will be regained. Not, however, through the elimination of all political combinations, but through their transformation from selfish, unscrupulous bodies dominated by private interests, to unselfish, public-spirited, organized groups of men, through whose united action alone a particular branch of political business can be satisfactorily carried on.

This transformation will come about by restoring to every voter an effective vote, and will be accomplished through a movement of the masses, not the few. Where "machine" politics rules it is the people who are ousted from power, who rebel, and who will re-establish themselves. They may suffer abuse and deception for a time, but they cannot be blinded long. Ultimately they will see and act, and law will correct the wrong, subject the "machine," and once more make the servant master a master servant.

REFERENCES.

Buckalew, Charles R. Proportional Representation. 1872.

Commons, John R. Proportional Representation. 1896.

Commons, John R. Proportional Representation in Belgium. Review of Reviews, Vol. XXI, p. 583 (May, 1900).

Cridge, Alfred. Proportional Representation in its Relation to the Initiative and Referendum. 1896.

Grey, A. Proportional Representation and the Majority. Nineteenth Century, Vol. XVI, p. 935 (December, 1884).

James, E. J. An Early Essay in Proportional Representation. Pub. Amer. Acad. of Polit. and Soc. Sci., No. 168. 1896.

McCracken, W. D. Proportional Representation. Arena, Vol. VII, p. 290 (February, 1893).

Westlake, J. Proportional Representation. Contemporary, Vol. XLV, p. 417 (March, 1884).

——— The Proportional Representational Review. A Quarterly Magazine.

APPENDIX.

PRIMARY ELECTION LAW OF MINNESOTA.

AN ACT PROVIDING FOR THE SELECTION OF CANDIDATES FOR ELECTIONS BY POPULAR VOTE AND RELATING TO ELECTIONS.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. On Tuesday seven (7) weeks preceding any election (except town, village or special elections) at which officers in this state are to be elected, primary elections shall be held in the several election districts comprised within the territory for which such officers are to be elected, in accordance with this act, which shall be known as the primary election, for the purpose of choosing candidates for all elective district, county and city officers, and elective members of school boards, park boards, library boards, in cities having over 50,000 inhabitants, and all other officers which are to be chosen wholly by electors within any subdivision of this state, except state officers who are chosen wholly by the electors of the entire state, and elective members of school boards, park boards and library boards in towns and villages and in cities of this state having 50,000 inhabitants or less, at said ensuing election, and said primary election day shall be and constitute the first day of registration of electors for the next ensuing election in all election districts of counties which are subject to the provisions of this act, and shall be in lieu of the first day now provided by law for the registration of electors in such districts; but nothing herein shall be construed to affect the date of the second or subsequent registration days now provided by law. For all other official positions within the gift of the people by ballot such other provisions as are provided by law shall apply.

POLITICAL PARTIES.

Section 2. A political party within the meaning of this act is one which shall have cast at least ten (10) per cent. of the total vote cast at the last proceeding [preceding] election for its leading candidate, or shall present to the county auditor a petition asking for the right to have a primary election ticket as hereinafter provided for, such petition to contain at least ten (10) per cent. of the qualified electors of the county in which the privilege is asked. Nominations of candidates for said offices shall be made by such political parties in accordance with the provisions of this act and not otherwise; provided, that nothing herein contained shall be construed to prevent the nomination of candidates for such offices by any groups,

individuals or so-called political parties which are not recognized political parties in accordance with this section, by petition in accordance with chapter four (4) of the General Laws of Minnesota for eighteen hundred and ninety-three (1893), which act shall be herein referred to as the general election law.

ELECTION DISTRICTS.

Section 3. The election districts for the purposes of this act shall be the districts which shall be fixed and determined according to law for the purposes of the election next following the primary election; and it shall be the duty of the city council, the supervisors of the towns or other officers required by said general election law to divide the territory over which they have jurisdiction into various election districts, to make such division at least two (2) weeks prior to the holding of said primary election. The maps or description of such division required by said general election law to be made and posted shall be made and posted at least one week preceding said primary election, and copies of such map or description shall be furnished to the judges of primary election in each district.

CANDIDATES.

Section 4. At least twenty (20) days before the primary election day, any person who shall be eligible to an office which he seeks shall appear before or file with the secretary of state, if an office to be voted for in more than one county, or the county auditor, if to be voted for in a single county, with an affidavit to the effect that it is bona fide his intention to run for the nomination for any specified office, and upon payment to the secretary of state of twenty (20) dollars, if for any other office to be voted for in more than one county, and if to be voted for in only one county ten (10) dollars to the county auditor thereof, a receipt for which shall be given him, the county auditor shall place his name upon the primary election ballot of his party, as hereinafter provided.

The secretary of state and county auditor shall number each affidavit so filed with them in numerical order as received. Such fee of ten (10) dollars, in case of a candidate for a city office, shall be immediately paid into the city treasury by the county auditor, in case of fees received by him, and in other cases of fees received by him, shall be so paid into the county treasury, but no fee shall be required from any person who is a candidate for any office to which no compensation is authorized to be paid.

In case of fees paid to secretary of state as aforesaid, he shall immediately after the last day for filing nomination affidavits with him has expired, divide the amounts of the fees of candidates equally between the counties within which such candidates are to run for office, and issue warrants for said amounts to the state treasurer, who will remit and pay the same at once to the treasurers of said counties respectively.

Said affidavit may be in substantially the following form:

I, A....B....being duly sworn (or affirmed), say that I reside at Number....street....(city or town) of....County of....State of Minnesota, and am a qualified voter therein, and a....(name of party), that I am a candidate for nomination to the office of....to be made

at the primary election of said party to be held on...., and hereby request that my name be printed upon the official primary ballot, as provided by law, as a candidate of the....party.

Subscribed and sworn (or affirmed) to before me.... date....

Section 5. The method of voting at such primary election shall be by ballot, and all ballots voted shall be printed as herein provided.

On the nineteenth (19th) day before the primary election the secretary of state shall certify to the county auditors of the several counties the names of all qualified candidates of the several political parties to be voted for within such counties, whose affidavits have been filed with him as in this act provided; and on the fourteenth (14th) day before the primary election each county auditor shall group all the candidates for each party by themselves, and shall prepare at once in writing a separate ballot for each party for public inspection, which he shall post in a conspicuous place in his office, and shall publish the same twice, before said primary election day, in the official paper of his county, said publications being made one week apart. He shall then proceed to have printed a separate primary election ballot for each political party which has qualified as hereinbefore provided, these ballots to be prepared in the following manner:

Each party ticket shall be absolutely uniform in color and size, shall be white and printed in black ink. Across the head of each ballot shall be printed in plain black type, first, the name of the political party on each ticket, following the words, "Primary Election Ballot." On the next line and in smaller type shall be printed the words, "List of Candidates for Nomination to Be Voted for in District...." (naming the district that certain ballot is intended for) ....Ward (naming the ward that certain ballot is intended for), followed by the name of the city, town or village in which the ballot is to be used.

On the next line, and to the right on the ballot, shall be a facsimile of the signature of the county auditor making up the tickets, followed by the words "County Auditor."

The balance of the ticket is to be made up in the same manner as the ballots used at general election, except that: The tickets are to be made up under the head in two (2) columns, with a design of parallel or filigree rule one-quarter (¼) inch wide, to separate the columns.

At the top of each column shall appear the words, "To vote for a person mark a cross, X, in the square at the right of the name of the person for whom you desire to vote."

Each one of these sentences at the head of each column shall be enclosed in a rule, the same as the name of each candidate, and at its end shall be a square directly over the squares in which marks are to be made, that square to have a black cross, X, which shall show the voter how to mark the ballot.

Beginning at the top of the left hand column at the left of the line, in black type, shall appear the position for which the names following are candidates, and to the extreme right of the same line the words "vote for," then the word "one," "two," or a spelled number designating how many persons under that head are to be voted for.

Following this shall come the names of each candidate for that position, enclosed in a light face rule, with a square to the extreme right, the parallel rules containing the names to be three-sixteenths (3-16) of an inch apart.

Each position with the names running for that position shall be separated from the following one by a black face rule to separate each position clearly.

The positions shall be arranged as follows, provided nominees for such positions are to be selected in said county under the provisions of this act hereinafter provided:

First, judicial; next, congressional; next, legislative; next, county officers; next, city officers; in all cases following under each heading given, the rotation used in the make-up of the various ballots at the general election.

Section 6. The names of candidates for each office upon the sample ballot shall be arranged alphabetically, according to surnames.

The names of candidates under headings designating each official position shall be alternated on the ballots in the printing in the following manner:

First, the forms shall be set up with the names in the order in which they are placed upon the sample ballot prepared by the county auditor. In printing each set of tickets for the various election districts, the positions of the names shall be changed in each office division as many times as there are candidates in the office division in which there are the most names. As nearly as possible an equal number of tickets shall be printed after each change. In making the changes of position, the printer shall take the line of type at the head of each office division and place it at the bottom of that division, shoving up the column, so that the name that was second before the change shall be first after the change.

After the ballots are printed, before being cut, they shall be kept in separate piles, one pile for each change of position, and shall be then piled by taking one from each pile and placing it upon the pile to be cut, the intention being that every other ballot in the pile of printed sheets shall have names in a different position.

After the pile is made in this manner, then they may be cut, and placed in blocks as provided by the general election law.

There shall be no printing on the back of the ballots, or any mark to distinguish them, but the initials of the judge or clerk.

Except as herein otherwise provided, the following sections of said general election law are hereby made applicable to primary elections and primary election ballots, under this act, to-wit:

Sections twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-nine (29) and thirty (30).

NOTICES AND PLACE OF PRIMARY ELECTIONS.

Section 7. The primary election shall be held in each election district at the place where the last election was held, or such other place as may be lawfully designated for the polling place for the election district, and shall be held at the place where the registration of voters occurs for the election then next ensuing.

The notice required by section forty-six (46) of said general election law shall be given with reference to such primary election and

said election is hereby made applicable to primary elections held hereunder.

JUDGES AND CLERKS.

Section 8. The judges of election within the counties subject to the provisions of this act shall be appointed and designated in the manner provided by said general election law at least ten (10) days prior to the primary election day, and the judges of election so designated in and for each election district in such county and sitting therein as a board of registration shall be and constitute the judges of primary election for such district.

In all election districts wherein provision is made by said general election law for the appointment of clerks of election, such clerks shall be appointed by the judges of election in the manner provided by section fifty-two (52) of said general election law, and said clerks shall assist the said board on and during the primary election and registration upon said primary election day.

The clerks may handle and make the necessary entries in the books of registration and the tally sheets in counting, or perform such other work as the judges may assign to them.

In case of emergency said judges may call to their assistance and appoint a number of clerks, not exceeding two additional, having the same qualifications as the said first named clerks, providing that said last named clerks shall receive no pay, unless it shall appear that they were necessarily appointed, and shall receive pay for such time only as they are necessarily employed to meet such emergency.

Section 9. If a judge or clerk of election shall fail to attend at said primary election, or be a candidate thereat, disqualified, refuses to act, or fails to qualify, or if any vacancy occurs, judges shall be chosen and clerks appointed to act instead in the manner prescribed by sections fifty-four (54) and eighty-eight (88) of said general election law, which sections are hereby made applicable to primary elections held under this act so far as may be, and all judges and clerks before acting shall qualify by taking and subscribing the oath as in section fifty-four (54) provided, which oath shall be held to cover the duties of judges and clerks of elections at such primary election.

On the primary election day the judges and clerks of elections shall perform both the duties of the board of registration as prescribed by said general election law and the duties of judges and clerks of primary election, but shall receive single pay for actual time employed only, notwithstanding they act in such double capacity.

REGISTERS.

Section 10. The registers provided by said general election law for the registration of voters shall have therein an additional column headed "Voted, Primary Election." No names of voters shall be placed upon said registers prior to the day of primary election; nor shall any be placed thereon upon said day, in any incorporated city, except of those who shall appear in person before the board of registration for that purpose.

COPIES OF LAW.

Section 11. The secretary of state shall provide copies of this law in conjunction with said general election law as amended, and transmit the same to the county auditor of those counties which are subject to the provisions of this act, at least nine (9) days before any such primary election, and the same shall be in lieu of any such copies of said general election law required to be transmitted to county auditors by the secretary of state for use in such counties.

LIQUOR AND SALOONS.

Section 12. The provisions of sections sixteen (16), seventeen (17), and eighteen (18) of said general election law, relating to liquor and saloons, except the closing of the saloons on election day, shall apply in like manner to the primary election day, under this act, during all the times that the polls are required to be open, and the said sections are hereby adopted as a part of this act, and the mayor shall make proclamation as to said primary election day in accordance therewith.

ARRANGEMENT AT POLLS, BALLOT BOXES, ETC.

Section 13. The following sections of said general election law as amended, relating to the place of holding the election, change thereof, arrangements at polling places, the ballot boxes, booths, constables, sheriffs, police officers, arrests and gatekeepers, are hereby made applicable to primary elections held under this act, to-wit: Sections seventy-four (74), seventy-five (75), seventy-six (76), seventy-seven (77), seventy-eight (78), seventy-nine (79), eighty (80) and eighty-seven (87); except that no more than one (1) ballot box for male voters, and one (1) ballot box for women who may be entitled to register and vote at the next ensuing election for any officer for which nomination is to be made at the primary election, shall be provided for the primary election; and for the purpose of determining the number of booths to be provided, recourse shall be had to the number of electors registered at the last preceding election within the same territory, ascertained as near as may be.

SUPPLIES FOR POLLS, ETC.

Section 14. The following sections of said general election law, except as herein otherwise provided, are hereby made applicable to primary elections held under this act, to-wit: Sections eighty-one (81), eighty-two (82), eighty-three (83), eighty-four (84), eighty-five (85), eighty-six (86).

VOTING.

Section 15. The polls in the several election districts on the primary election day shall be kept open for the purpose of voting, and the same officers shall remain in session for the purpose of registration of voters, for the same length of time, which shall be from six (6) o'clock in the morning until nine (9) o'clock in the evening. If at the hour of closing there are any electors in the polling place, or in line at the door, desiring to vote, and who are qualified to register and participate therein, and have not been able to do so since appearing at the polling place, said polls shall

be kept open reasonably long enough after the hour for closing to allow those present at that hour to register and vote. No one not present at the hour of closing shall be entitled to register and vote because the polls may not actually be closed when he arrives.

No adjournment or intermission whatever shall take place until the polls shall be closed and until all the votes cast at such poll have been counted and the result publicly announced; but this shall not be deemed to prevent any temporary recess while taking meals or other necessary delay, provided that the board shall remain in session and that no more than one member of the board of election shall at any time be absent from the polling place.

Section 16. All persons entitled to registration as voters in the election district on the day of the primary election, for the purpose of voting at the ensuing election, shall be entitled to participate in the primary election, but no voter shall receive a primary ballot or be entitled to vote until he shall have first been duly registered as a voter then and there in the manner provided by law, upon which registration (unless challenged, and if challenged, then only in event that the challenge is determined in favor of the voter), he shall be entitled forthwith, but not later, to receive a ballot of the political party with which he then declares (under oath, if his right thereto is challenged)) that he affiliated, and whose candidates he generally supported at the last general election, and with which party he proposes to affiliate at the next election; provided, that a first voter shall not be required to declare his past political affiliation. Such ballot shall be indorsed with the initials of two of the judges upon the back of the ballot at the bottom edge. A judge of election shall instruct the voter that he is to vote for his choice for each office, using only the ballot of the party with which he affiliates, and that he must return the ballot folded with the edges upon which are the initials of the judges uppermost.

Section 17. When an elector has received his ballot, he shall forthwith retire to an unoccupied booth, and without undue delay mark the ballot of that party with which he affiliates as he sees fit with the indelible pencil to be found in such booth. If he soils or defaces said ballot, he shall at once return the same and get a new ballot. In marking his ballot, he shall observe the following rules:

1. The elector shall designate his choice on his ballot by marking a cross (X) mark in each of the small squares opposite the names of the candidates for whom he desires to vote, being careful not to vote for more candidates for an office than are to be elected thereto at the election to follow the primary election as indicated on the ballot at the right of each office for which candidates are to be selected.

2. Rules Nos. 4 and 5 of section one hundred (100) of said general election law relating to ballots wrongly marked and rejected ballots are hereby made applicable to primary elections held under this act.

Section 18. When an elector has prepared his ballot he shall fold the same with the edges upon which are the initials of the judges uppermost, and so folded as to conceal the face thereof, and all

marks thereon, and shall hand the same to the judge of primary election who is in charge of the ballot boxes.

The folded ballot, when returned, shall be placed in the proper ballot box, and the name of the voter shall be checked off upon said registers in the column headed primary election.

Except as herein otherwise provided, the following sections of said general election law are hereby made applicable to primary elections held under this act, to-wit: Sections seventy-one (71), seventy-two (72), eighty-nine (89), ninety (90), ninety-one (91), ninety-two (92), ninety-three (93), ninety-four (94), ninety-seven (97), ninety-eight (98), ninety-nine (99), one hundred one (101), one hundred two (102), one hundred three (103), one hundred four (104), one hundred five (105), one hundred six (106), one hundred seven (107), one hundred eight (108), one hundred nine (109), one hundred ten (110), one hundred eleven (111), one hundred twelve (112), one hundred thirteen (113), one hundred fourteen (114), one hundred fifteen (115), one hundred sixteen (116), one hundred seventeen (117), one hundred eighteen (118).

Section 19. As soon as the polls are finally closed and before the canvass of votes, the judges and clerks of election shall prepare upon a blank delivered to them by the county auditor for that purpose a statement substantially as follows:

"Poll list statement of a primary election held in (name of city or village) Minnesota,....ward or town,....district, on the....(day and year)."

"The number of persons whose names appear upon the registers as present at the above named primary election was...., of whom .... where [were] women. The number of ballots cast by men was .... and the number of ballots cast by women was....."

The blanks in said form shall be filled by the proper number, in each case to be written in words and figures. Said form shall, before the canvass of the votes, be signed by each of the judges, and attested by each of the clerks. They shall also fill at the same time, in the registers, in the column for marking those who "voted" at such primary election, the word "no" opposite the name of every person whose name appears in the said register who has not voted at such primary election.

CANVASS OF VOTES.

Section 20. Upon the completion of the matters prescribed in the last section, the clerks and judges of registration shall immediately open the ballot boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each party, at the same time bunching the tickets cast for each party together in separate piles, and shall then fasten each pile separately by means of a brass clip, or may use any means which shall effectually fasten each pile together at the top of each ticket.

As soon as the clerks and judges shall have sorted and fastened together the ballots for each separate party, then they shall take the tally sheets provided by the county auditor and shall count all the ballots for each party separately until the count is completed, and shall certify to the number of votes cast for each can-

didate for each office upon the ticket of each party. They shall then place the counted ballots in the box, but in no case shall they separate them from each other. After all have been counted and certified to by the clerks and judges they shall seal the returns for all parties in one envelope, to be returned to the county auditor.

Except as herein otherwise provided, the matters pertaining to the canvass of votes shall be conducted in the manner prescribed by the following sections, as amended, of such general election law, and the same are hereby made applicable to primary elections held under this act, to-wit:

Sections one hundred and twenty-three (123), one hundred twenty-five (125), one hundred twenty-six (126), one hundred twenty-seven (127), one hundred twenty-eight (128), one hundred twenty-nine (129), one hundred thirty-four (134), one hundred thirty-five (135), one hundred thirty-six (136), one hundred thirty-seven (137), one hundred thirty-eight (138), one hundred forty-eight (148), one hundred forty-nine (149).

TALLY SHEETS.

Section 21. Two tally books or two sets of tally sheets for each political party having candidates to be voted for at said primary election shall be furnished for each election district by the county auditor, at the same time and in the same manner that the ballots are furnished and shall be substantially as follows:

Each tally sheet or the first sheet of each tally book to be furnished, shall be headed "Tally Sheet for.... (name of political party)....(name of city or village)....(county),.....(ward or town), ...election district, for a primary election held....(date)."

The names of candidates shall be placed on the tally sheets in the order in which they appear on the official sample ballots, and in each case shall have the proper party designation at the head thereof.

Except as herein otherwise provided, tally sheets shall be prepared in accordance with sections one hundred thirty (130), one hundred thirty-two (132) and one hundred thirty-three (133) of said general election law,) and the same are hereby made applicable to primary elections held under this act.

RETURNS.

Section 22. In making out the returns of the primary election in the several election districts the same shall be done and all matters pertaining thereto conducted in accordance with the following sections of said general election law, except as herein provided, to-wit:

Sections one hundred fifty-one (151), one hundred fifty-two (152), one hundred fifty-three (153), one hundred fifty-six (156), one hundred fifty-seven (157), one hundred sixty-one (161), and one hundred sixty-two (162), and said sections are hereby made applicable to primary elections held under this act.

CANVASSING BOARD.

Section 23. The clerk of the district court of the county, the county auditor, the chairman of the board of county commissioners,

and two justices of the peace of the same county, of opposite political parties from that of the majority of the other members of the canvassing board, if possible, to be selected by the judge or judges of the district court, shall constitute the county canvassing board for the purposes of the primary election, and shall meet at the court house in the county at ten o'clock in the morning of the second day after said primary election, and shall proceed, after taking the usual oath of office, to openly and publicly canvass the primary election returns made to the county auditor.

Provided, however, that no person who shall be a candidate at any primary election shall be eligible to act as a member of said canvassing board, and if any vacancy occurs in said canvassing board by reason of the ineligibility of any of the hereinbefore mentioned persons to serve, said vacancy shall be filled by the judges of the district court of the county wherein the said primary election is held, by appointing to fill such vacancy some duly qualified elector of said county, who is not a public officeholder.

Any three of said canvassing board shall constitute a quorum, and are authorized to make the canvass herein provided and to certify the results thereof.

The canvassing board shall not wait until all the returns are at hand before beginning, but after filling out their sheets with the names and number of the election districts, they shall take such election returns as are at hand and fill in the results there shown, and when the results are not at hand they shall leave a space until the missing returns are brought in.

Said canvass shall be completed by the said county canvassing board as to all candidates being voted for in other counties, by the evening of the third day following said primary election, and the result certified to the secretary of state immediately, as hereinafter provided.

Section 24. The canvassing board shall make and prepare a statement, the same to be signed by the said board, and filed in the office of the county auditor, as follows:

1—A statement containing the names of all candidates voted for at the primary election, with the number of votes received by each, and for what office, said statement to be made as to each political party separately.

2—A statement of the names of the persons or candidates of each political party who are nominated, to-wit: Those persons or candidates of such political party who received the highest number of votes for the respective offices; and where there is more than one person to be elected to a given office at the ensuing election, there shall be included in said statement of nominations the names of so many candidates of such party receiving the next highest number of votes for that office as there are persons to be elected to such office at said ensuing election. Said statement shall in like manner be made separately as to each political party.

3—A statement of the whole number of electors registered and the number of ballots cast, male and female, separately at such primary election.

If two or more candidates for the same political party are "tied" for the same office, the "tie" shall be determined by lot to be cast

then and there by and as the canvassing board may determine. It shall be the duty of the county auditor, upon the completion of its canvass by said canvassing board to certify to the secretary of state the vote, as shown by such statement for all candidates to be voted for in more than one county on or before ten (10) o'clock of the morning of the fourth day following said primary election, and to mail or deliver in person to each candidate to be voted for in his county alone, by said statement shown to be so nominated, a notice of such fact, that his name will be placed upon the official ballot at the ensuing election, provided that a fee to be named therein is paid on or before the day to be named therein, in each case the same to be named in accordance with the fee and date required by said general election law, and a notice further that his name will not be placed upon the ballot if said fee is not paid by such time.

The officers who are charged by law with the duty of canvassing returns of general elections made to the secretary of state shall also open and canvass the returns made to him of any primary election, under this act, at the usual time and place, meeting for the purpose on the seventh (7th) day following said primary election. They shall determine any "ties" between candidates in the same manner as in their canvass for general elections. Upon the completion of said canvass, it shall be the duty of the secretary of state to certify to the several county auditors the names of the persons found to be nominated for all the offices to be printed upon their county tickets, and to mail to each candidate shown by such state canvass to be nominated for any office a notice of the fact and that his name will be printed upon the proper official ballot for the ensuing election, upon the payment by such candidate of the proper nomination fee to the proper officer, as provided by the general election law.

Section 25. The persons whose names are so properly placed in said nomination statement shall be and constitute the nominees of the several political parties in which they were candidates, and such names shall be printed upon the official ballot prepared for the ensuing election in like manner as if such persons had been duly nominated by a party convention of delegates, with the certificate thereof filed as required by said general election law; provided, no name shall be placed upon the ballot for said ensuing election unless the further fee required by said general election law is paid within the time therein required, as in case of filing certificates of nominations from conventions. No names of candidates, when name was upon the primary election ballot under the provisions of section 4 of this act, shall be placed upon the official election ballot unless such candidates have been chosen in accordance with this act, except in case of a vacancy occasioned by the death, removal or resignation of any candidate so chosen or arising otherwise, and in such event the campaign or party committee of the same political party, or if there be no such committee, then a mass convention of such party, may fill such vacancy, the name of such new candidate to be certified under oath to the secretary of state or county auditor or auditors, or both, as the case may be, by the chairman and secretary of such committee or convention.

COMPENSATION AND EXPENSES.

Section 26. The following sections of said general election law relating to compensation and expenses are hereby made applicable to primary elections held under this act, except as may be herein otherwise provided, to-wit: Sections one hundred and fifty-eight (158) and one hundred seventy-two (172). The compensation of the clerk of the district court shall be the same as that of other members of the canvassing board.

REVIEW BY COURTS.

Section 27. Whenever it shall appear by affidavit to any judge of the supreme court or district court of the county that an error or omission has occurred or is about to occur in the printing of the name of any candidate on official ballots, or that any error has been or is about to be committed in printing the ballots, or that the name of any person has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed or is about to be performed by any judge or clerk of the primary election, county auditor, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred, or is about to occur, such judge shall by order require the officer or person or persons charged with the error, wrongful act or neglect to forthwith correct the error, desist from the wrongful act or perform the duty, and do as the court shall order or to show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order performed. Failing to obey the order of such judge shall be contempt.

Any candidate at such primary election who may desire to contest the nomination of any candidate for the same office as [at] said primary election may proceed by such affidavit so presented, provided that such affidavit be presented within five (5) days after the completion of the canvass by said canvassing board, and not later, and the candidate whose nomination is so contested shall, by the order of such judge duly served, be required to appear and abide by the orders of the court to be made therein.

OFFENSES AND PUNISHMENTS.

Section 28. The offenses and penalties and punishments thereof, as set forth in the following sections of said general election law, shall be applicable to the same persons and matters pertaining to the primary elections held under this act, and said sections are hereby made applicable to primary elections held under this act, to-wit: Section one hundred fifty-nine (159), one hundred sixty (160), one hundred ninety-four (194), one hundred ninety-five (195), one hundred ninety-six (196) and one hundred ninety-seven (197).

Section 29. All acts and parts of acts inconsistent with this act are hereby repealed.

Section 30. This act shall take effect and be in force from and after September 1st, 1901.

Approved April 10th, 1901.

A provision in the Oregon direct primary law of 1901 to prevent the fraudulent filling of deliberatively created vacancies, and to prevent candidates who have been repudiated at the primaries from securing a place upon the general election ballot.

Section 5 of the Oregon direct primary law: "The name of a candidate of any political party as defined in this act, shall not be printed on the ballots to be used at the ensuing election unless such candidate be selected at the primary election, and according to the methods provided for in this act, save that in case of death after nomination at such primary election, and not otherwise, a vacancy so caused may be filled by the officer or committee so authorized by the proper party rules and constitution, on his or their petition to the county clerk. No person whose name has been proposed and voted on as that of a candidate for nomination at such primary election, and has not received a nomination thereby, shall be nominated as a candidate for public office at the ensuing election in any other manner."

The party platform and party organization under the Oregon law.

Section 13. A proposition, within the meaning of this act, is a statement of political party principle or policy, or a resolution or question affecting party government or organization or administration, submitted by petition under this act to be voted upon by the voters, members of the party, in a designated electoral district. Every proposition shall be so framed as to occupy the smallest possible space on the ballot, and at the same time express clearly its intended meaning; it shall be brief and concise in terms, shall cover a single point or question, and shall not exceed fifty words in length. Every proposition shall be printed on the ballot in nonpareil type, and shall be so placed on the ballot as to leave a space at its left in which shall be written the words "Yes" and "No," the latter word directly below the former, both of which words shall be numbered consecutively as are the names of candidates, the voter's marks to be made between the words and their respective numbers, and just above the first proposition printed on each ticket shall be printed the direction, "Vote yes or no." A majority of the votes cast for and against each proposition shall determine its adoption or rejection. If a ballot shall exhibit a vote for two inconsistent propositions, it shall be counted for neither.

Petitions under the Oregon law.

Section 21. * * * Names and propositions shall be printed on such ballots on petition of individual electors of the respective parties, designating the name of the candidate, his residence, with street and number, if any, the nomination or party office or honor sought by the candidate, and the party ticket or column, in not over three words, in which the name or proposition is to be printed, each petition to be filed on behalf of a single name or proposition. Every such petition shall be signed by electors, mem-

bers of the party, such membership being certified and sworn to in the petition, in number equal to at least five (5) per centum of the vote polled at the last general election by the party in whose ticket the name or proposition is to be printed, for its candidates receiving the highest number of votes, in the electoral district in which such name or proposition is to be voted upon, in case the party in whose ticket such name or proposition is to be printed is a political party as defined in this act. Otherwise such petition shall be signed by electors in number equal to at least one-half of one per centum of the total vote cast at the preceding general election in the electoral district for which such petition is presented. Each elector signing a petition shall add to his signature, his place of residence with street and number, if any, and each elector shall be qualified to subscribe to only one such petition for each nomination or party office or honor or proposition covering the same point, and, in so signing such petition or petitions, shall act as a member of but one party.

THE STEVENS DIRECT PRIMARY BILL OF WISCONSIN.[1]

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Hereafter, all candidates to be voted for by the people, except those for village, town and school district offices, shall be nominated either at a primary election, held in accordance with this act, or by petition in accordance with subdivision 3 of section 30 and section 32, statutes of 1898. This act shall not apply to special elections to fill vacancies nor to judicial elections, except those for justices of the peace and police justices.

Section 2. Primary elections shall be held at the regular polling place in each election precinct in this state, on the first Tuesday in September, 1902, and biennially thereafter, for the purpose of nominating candidates to be voted for at the next general election, and shall likewise be held for the purpose of nominating candidates to be voted for at any city election, at least two weeks before the date of holding such election.

Section 3. On or before sixty days prior to the holding of any such primary election, preliminary to a general election, the secretary of state shall make out and transmit a notice thereof in writing, to each county, town, village and city clerk, and designate therein the offices for which candidates for nomination are to be voted for at such election. Upon receipt of such notice, each county clerk shall forthwith publish once so much thereof as may be applicable to his county, in one newspaper of general circulation published therein, in the interests of each of the two political parties that cast the largest vote in said county at the preceding general election, and each town, village and city clerk shall forthwith cause notice of the holding of such election to be posted in three public places in each

1 As returned from the Committee on Privileges and Elections.

election precinct in his town, village or city, stating therein the time when and place where such primary election will be held in each precinct therein. In the case of city elections, the city clerk shall make one publication of such notice in a newspaper of general circulation published in the interests of each of the two leading political parties therein, and shall also cause such notice to be posted in three public places in each election precinct therein, such publication and posting to be at least four weeks before any such primary election. Each county clerk, before the first Monday of June, 1902, and biennially thereafter, shall transmit to the secretary of state the name and postoffice address of each town, city and village clerk in his county.

Section 4. The name of no candidate shall be printed upon an official ballot at any primary election, preliminary to a general election, unless at least thirty days prior thereto there be filed in his behalf a nomination paper or papers, stating his name, residence, with street and number, if any, the office for which he is a candidate, the party or principle he proposes to represent and no other. Such paper shall in all cases be signed by at least two per cent. (2%) of the voters of the party or organization named and proposed to be represented therein, in the state or the political subdivision thereof as the case may be, for which such person is proposed as a candidate. In case of candidates for state offices, the electors signing shall be distributed over and reside in at least twenty (20) counties of the state, and be at least two per cent. (2%) of the party vote in each such county; in case of candidates for congress, the electors signing shall be distributed over and reside in at least one-fifth (1-5) of the election precincts in at least one-half (½) of the counties in that congressional district, each such election precinct being represented by at least two per cent. (2%) of the party vote therein; in case of candidates for the state senate and the assembly, or for county and city offices, the electors signing shall be distributed over and reside in at least one-third (1-3) of the election precincts in each such district, county or city, and shall constitute at least two per cent. (2%) of the voters of such party in each such district, county, city or voting precinct, as the case may be. Provided that any political organization, which, at the last preceding general election was represented on the official ballot by either regular party candidates or by individual nominees only, may, upon complying with the provisions of this act, have a separate primary election ticket as a political party, if any of its said candidates or individual nominees received one per cent. (1%) of the total vote cast at such preceding general election in the state or subdivision thereof in which the candidate seeks the nomination. The basis of such percentage in each case shall be the vote of the party for its candidate receiving the largest vote at the preceding general election in such state, county or other subdivision thereof. In the case of petitions filed for non-partisan candidates, the petition shall contain at least four per cent. (4%) of the total vote cast at the last preceding general election in the state or subdivision thereof, in which the person is a candidate, such signers to be distributed in each case as required by the provisions of this section.

Section 5. Each signer to a nomination paper shall add to his signature his business and residence, his street and number, if any, and declare in such nomination paper, that he intends to support the candidate named therein. For all nominations, except state officers, there shall be separate nomination papers for each election precinct, and all signers on each separate nomination paper shall reside in the same precinct. For state officers, there shall be separate nomination papers for each county, and all signers on each separate nomination paper shall reside in the same county. The affidavit of a qualified elector shall be appended to each such nomination paper stating that he is personally acquainted with all persons who have signed the same, that he knows them to be electors of that precinct or county, as the nomination paper shall require, and that their residence and business are properly stated therein. Such affidavit shall not be made by the candidate, but each candidate shall file with his nomination paper or papers a declaration that he will qualify as such officer if nominated and elected.

Section 6. All nomination papers pertaining to state officers, members of congress, state senate or assembly, shall be filed in the office of the secretary of state; to county officers, in the office of the county clerk; to city officers, in the office of the city clerk.

Section 7. At least twenty-five days before any primary election preceding a general election the secretary of state shall transmit to each county clerk a certified list containing the name and post-office address of each person entitled to be voted for as a candidate in his county, at the ensuing primary election, together with a designation of the office and the party or principle which he represents. Such clerk shall before the twentieth day preceding such primary election make one publication of a notice of such primary election, which notice shall contain a complete list of all candidates to be voted for in the county, giving the name and address of each, under the title of the office for which he is a candidate, the party name in large type, the date of the election, the hours during which the polls will be open, and that the election will be held at the regular polling places in each precinct. Such notice shall also be published a second time, the week preceding such primary election. Such publications to be in one newspaper of the county of general circulation representing each of the two parties that polled the largest vote in the county at the preceding general election. At the time of the first publication, the county clerk shall forthwith mail such notice to each town, village and city clerk of his county, who shall immediately upon receipt of the same, post copies of such notice in at least three public places in each precinct of his town, village or city, designating therein the location of the polling booth in each election precinct.

Section 8. On the twentieth day before any primary election, preceding any general election, each county clerk shall prepare a sample official primary election ballot, placing thereon the names of all candidates to be voted for in any precinct of his county, for whom nomination papers have been filed. He shall forthwith submit the ticket of each party to the county chairman thereof, and mail a copy of the ballot to each candidate whose name appears

thereon, at his address as given in the nomination paper, and shall post in a conspicuous place in his office a copy of such ballot. On the ninth day preceding such primary election, the county clerk shall correct any errors or omissions in the ballot, cause the same to be printed and distributed as required by sections 41 and 44, statutes of 1898, in the case of ballots at a general election. The number of ballots shall be twice the number of votes cast in each election precinct at the last presidential election. The county clerk shall send with the ballots copies of this law, to be furnished him by the secretary of state.

Section 9. So far as applicable and not otherwise provided herein, the provisions of the foregoing sections shall apply to all primary elections held to nominate candidates for any city office. provided, that nomination papers shall be filed at least fifteen (15) days, the list of candidates posted and published in each city on the ninth day and the official ballots printed on the fourth day before the date of holding such primary election.

Section 10. In any case where the publication of a notice cannot be made as hereinbefore required, it may be so made in any newspaper having a general circulation in the county or city in which the notice is required to be published.

Section 11. All ballots, blanks and other supplies to be used at any primary election shall be furnished at public expense by the same officers who are now required to prepare the official ballot and furnish such supplies at general and city elections. All expenses incurred under the provisions of this act shall be paid out of the treasury of the city, county or state, as the case may be, in the same manner, with like effect and by the same officers as in the case of general and city elections, provided, that the cost of publishing any notice required by this act shall not exceed the fees fixed by section 4275, statutes of 1898, for legal notices. There shall be no other publications than those provided for in sections 3 and 7 of this act. It shall be the duty of the secretary of state and of the respective city and county clerks to take the proper steps, as now provided by law in relation to general and city elections, to have the name of every person nominated at a primary election placed upon the official ballot for the next ensuing general or city election.

Section 12. All primary elections shall be under the supervision of the same officers that have charge of general and city elections. All inspectors, ballot clerks and clerks of election for any primary, general or city election shall be chosen or appointed as provided by section 47, statutes of 1898, which said section is hereby amended so that all such election officers shall be chosen or appointed in the same manner as therein provided, except that such choice shall be made at a corresponding time in the month of August instead of September, as therein now provided. The ballot clerks shall perform the duties prescribed by section 50, statutes of 1898. The clerks of election shall keep a poll list of all persons voting, and perform such other duties as the inspectors prescribe; two inspectors belonging to two different political parties shall have charge of the registration of the voters and the other inspector shall receive and deposit the ballots. Each clerk and inspector shall take the oath prescribed in section 48, statutes of 1898.

Section 13. At all primary elections there shall be an Australian ballot made up of the several tickets herein provided for, all of which shall be securely fastened together at the top, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election. There shall also be a non-partisan ticket upon which, under the appropriate title of each office, shall be printed the names of all persons for whom nomination papers shall have been filed as required by this act, who are not designated on such nomination papers as candidates of any political party, as defined by section 4 of this act. The names of all candidates shall be arranged alphabetically according to surname under the appropriate title of the respective offices and under the proper party designation upon the party ticket or upon the non-partisan ticket, as the case may be. The ballots with the endorsements shall be in substantially the annexed forms, provided, that ballots for any city election may be varied as to the title of the offices to be printed thereon, so as to conform to the law under which each such election is held. On receiving his ballot at any such primary election, the elector shall forthwith, without leaving the polling place, retire alone to one of the booths or compartments to prepare the same by marking in the square at the right of the name of the person or persons for whom he wishes to vote a cross, thus: (X) If he wishes to vote for a person whose name is not on the ballot, he must write such name in the blank space provided for that purpose, and no cross (X) need be placed after the name so written. An elector may use or copy an unofficial sample ballot, provided the same is not printed upon paper of the color or quality of the official ballot. After preparing his ballot, the elector shall fold it so that its face will be concealed and the printed indorsement and signatures or initials thereon seen, and vote the same forthwith before leaving the polling place. On any primary election day the polls in each precinct in any city shall be open from six o'clock in the morning until nine o'clock in the evening, in all other pricincts, the polls shall be open from eight o'clock in the morning to nine o'clock in the evening.

Section 14. The name of no candidate shall be printed on the primary election ballot unless the nomination paper or papers required by this act be filed in his behalf, but any elector may vote for any other person by writing his name in the space provided on such ballot under any office. If any elector write upon his ticket the name of any person who is a candidate for the same office on some other ticket than that upon which his name is so written, the ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written and shall in no case be counted for such person as a candidate upon any other ticket. In case a person is nominated on more than one ticket he shall forthwith file with the proper officer a written declaration indicating the designation under which his name is to be printed on the official ballot. The name of no person shall be placed on the official ballot used at any general or city election unless he shall have been nominated as provided in this act, but any elector may write on his ballot the name of any person for whom he desires to vote, as now provided by law. Nominations may be declined as provided in section 34, statutes of 1898. Vacan-

cies occurring after the holding of any primary election shall be filled by the party committee of the city, county, district or state, as the case may be.

Section 15. No person, except as hereinafter provided, shall be entitled to vote at a primary election unless duly registered. Every primary election day and the Monday next preceding it shall be registration days on which the inspectors shall exercise the powers prescribed by sections 25 and 26, statutes of 1898, except that no person shall be registered on or after the day of holding a primary election without personally appearing before the inspectors. The inspectors shall register any person who shall on any registration day file an affidavit or affirmation from which it appears that he is a qualified voter in such election precinct. Any person registering on either of the said days as prescribed herein, if otherwise a legal voter, shall be entitled to vote at the ensuing general or city election without other registration. There shall be no other registration day or days for either a primary, general or city election, except that prescribed by section 27 of the statutes of 1898. No voter shall be required to register under the provisions of this act in any election precinct where registration is not now required by law. The inspectors shall be in session for the purpose of registration from nine o'clock in the morning until eight o'clock in the evening, except that on the day of holding primary election, and on that day from six o'clock in the morning until nine o'clock in the evening. No inspector or clerk shall be paid to exceed three dollars as compensation for his services on any registration, primary, general, or city election day.

Section 16. The party committee of each election precinct hereinafter provided for, may appoint in writing over their signatures, two party agents or representatives, with an alternate for each, who shall act as challengers for their respective parties, and have the powers prescribed by section 46, statutes of 1898. The chairman of each party committee shall represent his party in the polling booth of his precinct during the canvass and return of the vote, but he shall not act as an officer of a primary election.

Section 17. In canvassing the vote the officers of the election shall proceed in the manner prescribed in section 76, statutes of 1898, so far as the same is applicable. They shall put aside and not count for any candidate any ballot upon which an elector has attempted to vote for candidates upon more than one ticket of such ballot. The inspectors of election in each precinct shall make a duplicate list of the candidates voted for upon each ticket used at such primary election, giving thereon a full and accurate return of the votes cast for each candidate. The chairman of each party precinct committee shall certify upon each duplicate return relating to his party, that the same is an accurate and full return of all votes cast by his party. The inspectors shall forthwith send one copy of the return as to each political party to the county chairman of that political party and also deliver or send all returns to the county clerk, if a primary election preceding a general election, or to the city clerk, if a city election. The person delivering such return shall receive the compensation provided by section 78, statutes of 1898, and be liable for neglect to deliver the

same as provided in section 79, statutes of 1898. Provided always that such returns shall be sent by express or registered mail where practicable.

Section 18. The vote at a primary election shall be canvassed in the following manner: If for a single precinct by the inspectors therein; if for a district having more than one precinct, and wholly within any ward, city or county, the canvass shall be made from the returns provided for by section 17, by the county clerk and the chairman and secretary of the county committee of each political party having a regularly organized committee therein, if the primary election be preliminary to a general election, or by the city clerk and chairman and secretary of the party city committees, if preliminary to a city election. Such board of canvassers shall meet at eleven o'clock in the forenoon of the third day (Friday) succeeding such primary election at the office of the county or city clerk, as the case may be, and proceed to canvass the vote substantially as provided by section 82, statutes of 1898. They shall make and certify duplicate returns as to the votes cast for the candidates voted for wholly within the limits of any one county and forthwith certifiy and file one complete return with the city or county clerk, as the case may be, and immediately deliver so much of the other as relates to each party to the respective party county chairmen. They shall also make an additional duplicate return in the same form showing the votes cast for each candidate not voted for wholly within the limits of any one county. The county clerk shall forthwith send to the secretary of state by registered mail or express, one complete copy of all returns as to such candidates. The county clerk shall likewise send the chairman of the state central committee of each party a duplicate copy of the returns last described relating to the candidates of each such party.

Section 19. The vote for all candidates not to be voted for wholly within the limits of any one county shall be canvassed from the returns provided for in section 18 by the secretary of state and the chairman and secretary of the state central committee of each political party in the state, who shall meet for that purpose in the office of the secretary of state at twelve o'clock noon on Tuesday one week after each primary election preliminary to a general election. They shall make and certify duplicate returns showing the vote cast for each such candidate and forthwith file a complete copy of the same in the office of the secretary of state and deliver to the chairman of the state central committee of each political party a certified statement of all votes cast for the candidates of the political party represented by such chairman. In case of the failure of any county clerk to forward the returns as required by this act, the secretary of state shall forthwith procure the missing return as provided in section 94, statutes of 1898.

Section 20. In all cases the person upon any ticket receiving the largest number of votes for any office shall be declared the candidate of his party for such office. In case of a tie vote, the tie shall forthwith be determined by lot by the canvassers. Upon the canvass of the votes that determine the nomination of any candidate, it shall be the duty of the city or county clerk or secretary of

state, as the case may be, to forthwith give notice of such fact in writing to the person nominated. When filed with any public officer, any such return shall at all times be open to the inspection of the public. No public officer shall be entitled to any additional compensation for performing any duty required by this act and no member or officer of any political committee shall receive any compensation from the public for the services required by this act or for expenses incurred in the performance of the same.

Section 21. The platform of each political party shall be formulated in such manner as the state central committee of each party shall determine. The congressional committee of each district may meet with the nominee at the call of its chairman after the nomination has been declared, and formulate a platform for such congressional nominee and district.

Section 22. A party committee of three for each precinct shall be chosen in each election precinct at the primary election preceding each general election. Each voter may write in the space left on his ticket for that purpose the names of not to exceed three qualified electors of the precinct. The three having the highest number of votes shall constitute such committee and the one having the largest vote shall be chairman. In case of a tie, the choice shall forthwith be decided by lot by the inspectors in such manner as they may determine. The official return made by the inspectors shall show the names and the addresses of each party committeeman chosen.

Section 23. The party committee of each city and county and of each assembly district shall consist of the party chairman of each precinct in such city, county or district; the state senatorial district committee, of the chairmen of the assembly committees in such senatorial district; the congressional committees, of the party chairmen of the senatorial district committees of the districts wholly or partially in such congressional districts; the state central committee, of the party chairman in each county of the state. Each city, county and state central committee shall choose by ballot its chairman and an executive committee of not to exceed seven members. Such officers and committeemen for each ensuing campaign shall be chosen at a joint meeting of the candidates nominated and of the party committee for the city, county or state, as the case may be, each candidate having one vote in the selection of such officers and committeemen. The chairman and executive committee of each such committee shall elect a secretary and a treasurer who shall hold office till their successors are selected and accept office. Each candidate for congress, state senate or assembly shall, immediately upon his nomination, select a chairman, a secretary, a treasurer and an executive committee for his respective party district committee. Every chairman, secretary, treasurer and member of an executive committee shall be a member of their respective committees and have one vote in the decision of all questions by the committee. Each such chairman, secretary, treasurer or executive committeeman shall hold office until a new party committee is elected in accordance with the provisions of this act, or until his successor is elected and accepts office. Each committee and its officers shall have the powers

usually exercised by such committees and by the officers thereof, in so far as consistent with this act. The various officers and committees now in existence shall exercise the powers and possess the duties herein prescribed until their successors are chosen in accordance with this act. In all meetings of said city, county or assembly district committees, each precinct chairman shall have one vote for every fifty votes or major fraction thereof cast by his party in his precinct at the last general election, each such chairman to have at least one vote; and in all meetings of the state central committee, each county chairman shall have one vote for every two hundred and fifty ballots or major fraction thereof cast by his party in his county at the last preceding presidential election, to be determined as provided in section 5 above, each chairman to have at least one vote.

Section 24. Whenever any party precinct chairman cannot exercise the powers and perform the duties required of him by this act, such duties shall be performed by a member of his party precinct committee to be designated by the precinct chairman or chosen by lot. If the chairman of any other party committee shall not be able to perform the duties herein required of him, the secretary of such committee shall exercise the powers herein vested in such chairman. If both the chairman and the secretary are unable to perform such duties, they shall be performed by a member of the executive committee chosen by the chairman, or, if the chairman cannot act, by the secretary. Any vacancy in a party precinct committee shall be filled by the remaining members of such committee; any vacancy in the place of an officer of any committee shall be filled in the same manner as that in which such officer was originally chosen. The chairman of each political committee shall call a meeting thereof when necessary or when requested by one-fifth of the members of such committee, reasonable notice of such meeting to be given.

Section 25. Any officer, member of any political committee or other person who shall wilfully fail or neglect to perform any duty by this act required of him, or who shall tamper with, change or wrongfully destroy any ballot, return or certificate of election, or wilfully do any act, the object of which is to change or wrongfully destroy any ballot or the record of any canvass of votes or in any way wilfully to interfere with the utmost honesty and fairness in conducting any such primary election or in making nominations thereat, shall be deemed guilty of a misdemeanor and, upon trial and conviction thereof, be punished by a fine of not less than twenty-five nor more than two thousand dollars, or by imprisonment in the county jail not less than sixty days nor more than one year, or by both such fine and imprisonment.

Section 26. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe or promise of gain of any kind in the nature of a bribe to a voter to induce him to sign any preliminary nomination paper or petition for nomination, and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such sign-

ing, shall be guilty of a misdemeanor and, upon trial and conviction thereof, be punished by a fine of not less than twenty-five nor more than five hundred dollars, or by imprisonment in the county jail of not less than ten days nor more than six months or by both such fine and imprisonment. If any candidate shall be convicted of any such offense, the name of such candidate shall be stricken from the official primary election ballot, or if the conviction occur after any candidate shall be declared the nominee of his party, he shall forfeit his nomination and in either case such nomination shall thereby be and become vacated and the place filled as provided in section 14 above. The same penalty of forfeiture shall be inflicted on any candidate who shall participate in any corrupt or fraudulent practices at such primary election, or who shall connive with or aid and abet any one else in so doing, for the purpose of securing his nomination thereat.

Section 27. Any act declared an offense by the general laws of this state concerning elections shall also in like case be an offense in all primary elections, and shall be punished in the same form and manner as therein provided; and all the penalties and provisions of the law as to such election, except as herein otherwise provided, shall apply in such case with equal force and to the same extent as though fully set forth in this act.

Section 28. The provisions of the statutes now in force in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof and of other kindred subjects shall apply to all primary elections in so far as they are consistent with this act. The intent of this act being to place the primary election under the regulation and protection of the laws now in force as to elections.

Section 29. All acts or parts of acts inconsistent with or in conflict with the provisions of this act are hereby repealed.

Section 30. This act shall take effect and be in force from and after the first day of May, 1901.

INDEX.

Adams, John, and caucus club, 4.
Alabama, primaries in, 141.
Amendment to California Constitution, 198,
Arkansas, primaries in, 190.
Appointment to office, in county, 435; in city, 436; in State, 438.
Assessment of candidates, 125, 127; in Kentucky, 178.
Attendance at polls, 158, 185, 285–287.
Ballot, arrangement of, 218, 236, 238, 406; separate, 197, 209, 238; names on, 278.
Ballot reform, when accomplished, 84; politician and, 86; scope of, 87.
Bills, direct primary, introduced, 1901, 94; in Utah, 191; in Colorado, 182; in North Dakota, 180.
Bossism, extent of, 90.
Boston, primaries in, 102, 103; caucus, law of, 105.
Britton v. Board, Cal. decision, 360.
Bryant bill of Wisconsin, 247.
California, amendment to Constitution, 198; court decisions in, 354; early primaries in, 148; first law of, 147, 193; primary laws of, 196; law of 1901, 96, 200; primary reform in, 193; test for voting, 349; weakness of law, 204.
Candidates, busy class, 318; concentration of, 182; in Cleveland, Ohio, 318; distribution of, 307; good, 321, 322; leisure class, 318; "machine," under direct primary; modest, 320; number of, 283; nationality of, 308; in Kansas, 186; lists of, when published, 404; poor, 317; representative, 285, 287; requirements from, 278; weak, nomination of, 337, 363; wealthy, 315, 316; who may run, 400.
Canvass, under closed primaries, 408; under open primary, 408; how made, in Mich., 239.
Canvassing board, how chosen in Mich., 239; salary of, 239; in Minn., 220; under Ill. bill, 209; under Stevens bill of Wis., 250, 251.
Caucus, corruption in, 37–41; devices for control of, 41; definition of, 34; importance of, 36; in country, 38; origin of, 4; abolition of, 3; legalization of, 69; lack of interest in, 42; control of, 40.
Caucus laws, early, 90; inefficiency of, 7, 41, 70, 243.
Challengers, 407.
Chelsea, direct primaries in, 102.
Chicago, civil service rules in, 427.
Cincinnati, direct primaries in, 155.
City, appointive offices in, 436.
City government, corruption in, 324; reform, doctrine of, 325; and direct primaries, 324.
City voter, advantage of, 304; relation to country voter, 305.
Civil service reform, 419; and imperialism, 430; in England, 429; in United States, 430; legislation for, 426; method of, 429; principles of, 432; rules in cities, 428.
Clark system of nomination, 71, 72.
Cleveland primaries, 155; attendance at, 158, 286; experience with, 157, 389; and factional politics, 157.
Closed primary, 406; bills providing for, 335; in Minn., 223; practicability of, 336; under Colby bill of Mich., 236; under Stevens bill of Wis., 250; where used, 334. See also TEST.
Colby bill of Mich., 236.
College, American, and citizenship, 27; typical, Yale, 28.
College graduate and reform, 30; apathy toward wrongful politics, 30; in politics, 26.

Colorado, court decision in, 353; direct primary in, 182.
Combinations, political, cause of, 22; in rural districts, 23; remedy for, 31; strength of, 23.
Committee of credentials, "machine controlled," 59.
Concurrent primaries, 122, 236, 400; in Cal., 197; not used in Ill., 207; in Mich., 237; in Minn., 219; in Oreg., 233; under Ill. bill, 209; under Stevens bill of Wis., 249.
Conference, national, 98; committees, 6; system, 8.
Congressional caucus, its origin, 12; its power, 14, 16; its influence, 10; legacy of, 17; protests against, 13, 15.
Constitutionality of primary laws, 352.
Convention, choice of candidates in, 50; classes of delegates in, 57; early delegate, 9; in session, 20; modern, transition to, 17; mixed, 15; origin, 7, 9; party-disintegrating forces at, 267, 268; party conciliation in, 51; party enthusiasm in, 51; party success and, 50; as party institution, 49; platform of, 52; pure, 48; state, 8; school of politics, 53; serves all parties, 53; service of, 49; wins favor, 8.
Convention system, working of, 19; improvement of, 91; organization of, 18; complexity of, 21, 58.
Corporations, control of nomination by, 296; increase in, 296; in politics, 294; under direct primaries, 296.
Correspondence committees, 6, 7.
Corrupt practices acts, 444–447.
County, appointive offices in, 435.
Country voter, in South, 129; and politician, 306; interest of, 302, 304; under convention system, 303; under direct primary, 181; in Kansas, 185, 307; disadvantages of, 304; under nominating districts, 307; under Minn. law, 305.
Court decisions, in Colo., Penn., N. Y., Cal., Oreg., 353.
Crawford county, direct vote system of, 84; inaugurated, 147; experience with, 149, 388; freedom of, 150; law for, 148.
Delegates, corrupt, 60; how corrupted, 60; instructed, 74; uninstructed, 75; number of, 58; selection of, in Oreg., 227; in Ill., 206; in Wash., 211; in Cal., 200; under Stevens bill, 250.
Delaware county, Pa., primary law of, 120; nominations in, 151.
Democratic party, in South, 122, 388.
Development, industrial, 25.
Direct nomination, movement toward, 3; expediency of, 77; advantages of, 74.
Direct primary, argument against, 393; advantages of, in Kan., 186; attendance at, 185, 285; corruption under, 181; first, 84; idea of the, 263; in 1900, 93; opposition to, 180, 182. Optional in Mo., 177; in Neb., 188; in South, 121; in New York, 110; in Ind., 165: in Ky., 170; in Ohio, 155; party-regulated, 183, 184, 390; party apostasy under, 275; party leaders under, 276; aim of, 262; when held, 399.
Direct primary legislation, diversity of, 87; first, 84, 90; imperfection of, 261; passed in 1901, 96; in 1899, 93; model law, 397; bills introduced 1901, 94; opposition to, 95; interpretation of, by courts, 373.
Direct primary reform, 74; men prosecuting, 99; nature of, 99; strength of, 97; States prosecuting the, 94; progress of, 91.
Easley, R. M., Secy. Civic Federation, Chicago, 98.
Educational aristocracy, 78.
Electors, presidential, loss of power, 14.
Elections, authorized by law, 355, 374; frequency of, 441.
Ely, R. T. theory of corporate interference in politics, 294.
Enrollment, in N. Y., 112; in Mass., 107; in Ky., 170. See also REGISTRATION.
Erie county, primaries in, 153.
Expense: Court decisions on, 375; of convention system, 383, 384.
Expense of primaries, 122, 379. How met, in Cal., 197; in Ky., 173; in Ill., 207; in Ind., 167; in Mo., 177, 178; in Nebr., 189; in Minn., 222; in Nebr.,

188; in Oreg., 235; in the South, 125; under Stevens bill, 249.
Factions in party under direct primaries, 186; representation of, in Miss., 142.
Fee, constitutionality of, 282; expediency of, 279; discrimination of, 315. Required, 278; in Ill., 209; under Colby bill, 236; by Minn. law, 217; in Oregon, 231; under direct primary law in Mich., 237.
Florida, direct primaries in, 140.
General election, nature of, 331.
Georgia, direct primaries in, 139.
Governor, position of, in State, 437.
Grand Rapids, direct primary law of, 237.
Gregory, Charles Noble, on corrupt practices acts, 444.
Hagemeister bill of Wisconsin, 253; unconstitutionality of, 256.
Hatton amendment to Stevens bill of Wisconsin, 252.
Hennepin county, primary law of, 215; success of, 210.
Hicks direct primary bill of Minn., 214.
Hopkins, John S., on national league, 98.
Illinois primaries, corruption in, 204; legislation for, 205; law of 1899, 206; weakness of law, 209. Direct primary bill of 1901, 209; prospects of reform in, 210.
Independent voter, excluded by test, 336; in city, 326; independent ticket under Oregon law, 227.
Indiana, direct primaries, counties using, 163; law of 1901, 96, 165; rules for, 163; test at, 349.
Insley, Edward, on conference, 98.
Iowa, primaries, 183.
Jackson county (Kan.), direct primary, 90, 183; experiences with, 307. See also KANSAS.
Kansas, direct primaries in, 90, 183, 307; advantages of, 187; candidates at, 283.
Kentucky, direct primaries in, 161; attendance at, 286; experience with, 390, 174; enrollment system for, 170; law for, 90; law of 1880, 169; law of 1892, 170; improvements in law of 1892, 171; test for voting at, 342.
Lackawana county, Pa., direct primaries in, 153.
Ladd v. Holmes, Oreg. decision, 364, 372.
La Follette, R. M., as primary reformer, 97, 241; addresses of, 98, 245, 246; campaign against, 257; defeat of, in convention, 244; annual message of, as governor, 61; veto message of, 254; and Stevens bill, 250.
Lancaster county, Pa., first primary law of, 151; Crawford system in, 150.
Legislative caucus, decline of, 15; influence of, 10; last, 18; legacy of, 17; nomination by, 12; origin of, 10.
Lewis bill of Wis., 245.
Liberty, false notion of, 40, 89.
Lincoln, Nebr., primaries in, 189.
Local act, what constitutes a, 376.
Lockwood act, Oreg., constitutionality of, 372.
Louisville primaries, attendance at, 286.
Louisiana, primaries in, 143.
Machine, and civil service reform, 423; and lower classes, 299; candidates of, 322; cause of, 24; in city, 325; in politics, 294; in rural districts, 23; in South, 126; in Wis., 95; its influence, 263. Opposition of, to reform, 95; in Minn., 223; in Mich., 237; in Wis., 244, 247, 248. Place of, in politics, 293; under direct primaries, 298, 300.
Majority nomination, 125; at convention, 288; experience with, 284; how secured, 290; in Nebr., 189; in Miss., 142; in S. C., 135.
Maryland, direct primaries in, 120.
Marsh v. Hanley, Cal. decision, 354.
Massachusetts, caucus law of, 103, 104; difficulty with law, 118; civil service law of, 427; primaries in, 102; stay-at-home vote in, 287.
Meyer, B. H., advisory councils, 295.
Michigan, primaries in, 235; Colby bill of, 236; law of 1901, 237; test at, 349.
Mills caucus law of Wis., 242.
Milwaukee, civil service rules in, 427.
Minnesota direct primaries, 213; country vote under, 305; attendance at, 286; candidates at, 284; experience with, 391; Hennepin county law, 215; Hicks

bill, 214; law of 1901, 96, 216; party organization under, 224; Ives amendment, 223; open primary in, 343; public press in, 312; test for voting, 219, 350.
Minority nomination, at conventions, 288; under direct primaries, 277; under "machine" politics, 288; remedy for, 290, 291; elections in Wis., 289.
Mississippi, primaries in, 141, 142.
Missouri, primaries in, 175; compulsory, 90; law of 1901, 177.
Municipal government, 324.
Nebraska, primaries in, 187.
Negro voter, in South, 124.
Nevada, primaries in, 191.
New England, early caucus in, 5.
New Jersey, primaries in, 119.
New York, civil service law of, 426; court decision in, 353; direct primary in, 110; enrollment system, 112; primary law of, 109, 110; primary regulations, 116; stay-at-home vote in, 287; test in, 350.
Nominations, methods of, 6; districts for, 307.
Nomination paper, 401; expediency of, in South, 279; in South, 106; in Wis., 281; objection to, 280; under Hennepin county law, 217; under Mich., bill, 236; when filed, 403. See also PETITION.
North Carolina, primaries in, 136.
North Dakota, primaries in, 180.
Notice of primary, when published, 400.
Ohio primaries, candidate at, 283, 318; law for, 155; changes in law, 158; turn out of voters, 286; press and, 312; stay-at-home vote in, 287. See also CLEVELAND.
One-man-power, growth of, 23; opposition to, 83; solution for, 83.
Open book method of nomination, 73.
Open primary, and "machine" control, 300; bills providing for, 335; constitutionality of, 367; in Cal., 198, 359, 365; in Minn., 219, 334; in Oreg., 233, 234, 363, 365; practicability of, 336; proposed form of, 405; trial of, 343; under Ill. bill, 209; under Stevens bill, 250; where used, 334.
Oregon, direct primary in, 226; scope of law, 226; court decision, 354, 363; law of 1901, 96, 230; political situation in Oreg., 365; test in, 349.
Parties under direct primaries: Apostasy in, 275; harmony in 268; in Kansas, 186; leaders of, 276; service of, 49; new parties, 200; responsibility of, 332.
Parties, weak: Exclusion of 339, 361, 374. Discrimination against, 360; under test, 336.
Parties which may participate, in Oreg., 227; in Cal., 200; in Minn. 216; in Ill., 207; in Wis., 249.
Party committee, election of, in Miss., 142; in Ind., 165. Power of, in Kentucky, 171; in South, 125. See also PARTY ORGANIZATION.
Party organization, maintenance of, 409, 410; in Mo., 179; in Mich., 240; in Minn., 224; in Oreg., 229; under Stevens bill of Wis., 250. In cities, 325; "machine" controlled, 265; strong, 264; under direct primaries, 265, 266, 276. See also PARTY COMMITTEE.
Pasters, use of, 405; in Cal., 202.
Patronage, influence of, 420–425.
Personal politics, in South, 127; evils of, 128.
Petition, merits of, 316; required in Ill. bill, 209; under Oreg. law, 231. See also NOMINATION PAPER.
Pennsylvania, court decision in, 353; Crawford system, 147: Delaware county primaries, 151; Erie county primaries, 153; first law in, 151; Lackawanna county primaries, 153; Lancaster county primaries, 150; local laws of, 84; stay-at-home vote in, 287.
Philadelphia, civil service rules in, 427; first convention at, 118.
Platform, how framed, 269, 270, 409; in South, 127; framed by candidates, 270; by convention, 273; by state central committee, 271; proposed plan for formulation of, 273; under, Oreg. law, 230; under Stevens bill, 250.
Polls open, time of, 407; in Ill., 208; in Mo., 178; in Mich., 238; in Oreg., 228, 233.
Press, in Cleveland, 310; in Minn. and Wis., 312; mission of, 313.
Primary: Corrupt, cause of, 88; remedy for, 91; and ballot reform, 88;

increase of corruption, 89, 91; extra-legal and corruption, 89. Control of, 88; definition of, 35; importance of, 36; in South, 121; party regulated, 89.
Primary election officers, 405; in Mo., 177. How chosen in Minn., 218; in Mich., 238; in Nebr., 188; in Wash., 212; in Mo., 178; in Ill., 207; in Cal., 200.
Primary reform: Relation to ballot reform, 84, 85; movement toward, 83; Wigmore on, 100; necessity of more, 99; organizations for promotion of, 97; progress of, 90; prospects of, 100.
Proportional representation, and direct primary, 464; claims for, 464; expediency of, 465; schemes of, 69.
Proxies, abuse of, 59.
Qualification for voting. See TEST; also CLOSED PRIMARY.
Referendum, agitation for, 445; advantages of, 456; disadvantages of, 457; in other countries, 455; in Switzerland, 460; in America, 453, 461.
Reform, primary, 45, 86, 466, 469.
Registration, in Cal., 198, 203; in Minn., 216, 218; in Nebr., 188; in Oreg., 228, 233; in Mich., 236; on primary day, 209; not on primary day, 178.
Regular nomination, 13, 17, 44,
Reinsch, Paul S., on civil service, 430.
Remsen, second choice, 290.
Republican party, in South, 122.
San Francisco, primaries in, 193.
Scranton, Pa., primaries, 285.
Second choice, 59, 290, 291.
Senators, popular election of, 443; nomination of, 449; election of, 450.
Signatures, how solicited, 401, 231; in Oreg., 232.
South, primaries in, 121; weak laws for, 124, 130; experience with, 129, 388; personal politics, 127; Republican party in, 122.
South Carolina, primaries in, 131, 133; importance of, 136; majority nomination, 135; test for voting, 134.
South Dakota, primaries in, 181.
Splitting of tickets, 209, 224.
Spier v. Baker, Cal. decision, 356.
State officers, nomination of, 222, 392.
State politics, in cities, 327.
Stevens bill, constitutionality of, 367; in committee room, 250; in senate, 252; perfection of, 250, 251; opposition to, 95, 251, 257.
Stevens, E. Ray, on Hagemeister bill, 253; work on bill, 250; argument of, 369.
Tammany, in Wis., 257.
Tennessee, primaries in, 160, 161.
Texas, primaries in, 145,
Tie, how determined, 221, 240, 409.
Terms of office, brevity of, 441.
Test, abolition of, in Cal., 359; and weak parties, 336; determining factors of, 332; difficulty of, 330; effect of, 336; forms of, in operation, 349; form of, 348, 378; test in Ark., 190; in Cal., 197, 198, 203, 358; in Ill., 208; in Ind., 165; in Minn., 219; in Mich., under Colby bill, 236, 239; in Mo., 177; in Nebr., 188; in Oreg., 228; legislature may prescribe, 199; objection to, 341; practicability of, 346; prescribed by party, 343; validity of, in Cal., 358; who shall prescribe, 343, 347. Constitutionality of test, in Nebr., 189; in Ind., 349; in Minn., 350; in N. Y., 350, 370. See also CLOSED PRIMARY.
Utah, primary law of, 190.
Virginia, primary law of, 136,
Voting, manner of, in Ill., 208; in Minn., 219; in Oreg., 228, 233; under Hennepin county law, 220; under Stevens bill of Wis., 249.
Washington, primary law of, 211; weakness of law, 212.
Watchers at polls, in Ky., 173; in Mo., 177, 179; under model law, 407.
West Virginia, primaries of, 162.
Wisconsin: All-night session of legislature, 251; Bryant bill of, 247; caucus laws of, 241-243; constitutionality of caucus laws, 368; convention, corruption in, 244; direct primary in, 243; Hatton amendment, 252; Lewis bill of, 245; primary reform in, 95, 241, 244, 246, 247; platform, 1900, 248; public press in, 312; Republican League of, 257; Stevens bill of, 249, 251, 255.

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